

- DECISION -

Claimant:
DAWNYELLE M BUTLER

Decision No.: 2129-BR-06

Date: October 02, 2006

Appeal No.: 0613412

S.S. No.:

Employer:
INNOVATIVE LEARNING CTR INC

L.O. No.: 64

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: November 01, 2006

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals makes the following findings of fact and reverses the decision of the Hearing Examiner. The claimant was employed from August 13, 2003 until June 20, 2006, as a performing arts teacher. The claimant became separated from employment as a result of a discharge.

The claimant was hired pursuant to a conditional teaching certificate. The conditional degree was valid until July, 2005. The claimant was informed, in May, 2004, when her conditional certificate was awarded what was required to continue in her position. See Employer's Exhibit 1. The claimant has known since May, 2004 that she had to take and pass the Praxis I test for Reading, Writing and Mathematics in order to maintain her employment.

The claimant decided not to take the Praxis I test. The claimant was of the opinion that she could not pass the mathematics portion of the test. The claimant also did not want to spend the money on the test since she believed she would fail.

CONCLUSIONS OF LAW

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

In a case of a discharge, the burden is on the employer to prove, by a preponderance of credible evidence, that the claimant was discharged for actions that rose to the level of gross misconduct as defined in Section 8-1002 of the law. The employer has met its burden.

The Board of Appeals has consistently held that a claimant should not be penalized if a good faith effort was made, by the claimant, to take and pass the tests necessary to maintain employment. See Abraham v. Prince George's County Public Schools, 487-BH-85. However, the claimant, in this case, failed to make a good faith effort to pass the test.

The Board would award unemployment insurance benefits had the claimant failed the test after having taken reasonable steps to prepare for it, and then became separated from employment for that reason. However, knowing full well her continued employment rested on her passing the test, the claimant decided not to take the test therefore eliminating any chance to pass it. The Board concludes that her actions rose to the level of gross misconduct within the meaning of the law.

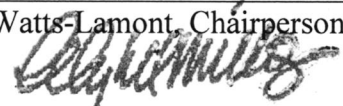
DECISION

It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. She is disqualified from receiving benefits from the week beginning June 18, 2006 and until she becomes re-employed, earns at least twenty times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:

DAWNYELLE M. BUTLER
INNOVATIVE LEARNING CTR INC
DAN DOHERTY ESQ.
HARBOUR SCHOOL
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

DAWNYELLE M BUTLER

SSN #

Claimant

vs.

INNOVATIVE LEARNING CTR INC

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 0613412

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

August 11, 2006

For the Claimant: PRESENT, VALERIE BUTLER

For the Employer: PRESENT, MARTHA SCHNEIDER, DAN DOHERTY, ESQ.

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated Labor and Employment Article, Title 8, Sections 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

FINDINGS OF FACT

The claimant worked for the above-captioned employer from August 18, 2003 through June 20, 2006. At the time the claimant was terminated, she was employed as a performing arts teacher, earning \$30,500 per year.

The employer had to terminate the claimant's employment as a performing arts teacher because she failed to receive the required conditional teaching certificate needed under the Maryland law to continue in her position. To gain the conditional certification, the claimant had to pass a State exam called Praxis I, which has three parts including a reading part, a writing part and a math part. All three parts must be passed in order to receive the conditional teaching certification. As a teacher, the claimant had a duty to know of any requirements in order to maintain her professional status as a teacher. The employer also provided the

claimant with some information with regard to the need to pass the Praxis I exam. However, the claimant failed to understand that she needed to pass the exam by the end of her current contract in June, 2006 in order to continue as a performing arts teacher. At that point, the claimant had made some efforts to study for the exam but was not going to be able to pass the mathematics portion of the exam. The claimant had begun doing some work on the computer and had taken some practice exams but was simply not fully prepared. The claimant has always struggled with mathematics. However, the claimant was able to pass the classes in high school which would have provided sufficient information to pass this basic math test. However, the claimant would have had to relearn the information. The claimant did have a demanding job working with special needs children and was also required to take Master's degree classes in the evening. However, had the claimant started studying earlier in the mathematics arena, she was capable of relearning and passing the exam. As the claimant felt strongly that she would not be able to pass the mathematics portion of the Praxis exam, she did not want to spend the money on taking the exam simply to fail. As the claimant has struggled with math her entire life, and had not put in enough hours of study, the claimant in all likelihood would not have passed the exam.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

Md. Code, Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits when he or she was discharged or suspended from employment because of behavior that demonstrates gross misconduct. The statute defines gross misconduct as repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises." Rogers v. Radio Shack, 271 Md. 126, 132 (1974).

EVALUATION OF EVIDENCE

A claimant who is terminated, is eligible for benefits unless it is established, by a preponderance of the evidence, that his termination was due to misconduct. In the case at bar, this burden has been met.

The claimant as well as her witness and the employer witness all credibly testified. The employer also presented documentary evidence. The credible testimony from both parties as well as the documentary evidence presented established the Findings of Fact, above. The evidence does not indicate that the

claimant was willful and deliberate in terms of not properly being prepared to take the mathematics portion of the Praxis I exam. The totality of the evidence tends to indicate that the claimant was negligent in understanding the deadline by which the Praxis I had to be completed. However, the claimant's neglect cannot be completely excused as she was working in the profession as a teacher and is required to understand the legal requirements beyond the communications of the employer. In other words, the claimant has an independent duty to meet the legal requirements. Nonetheless, the claimant's neglect was not willful and deliberate or repeated in nature and she had been making efforts to qualify as a professional teacher including taking Master's classes at night and doing some preparation with regard to math. Therefore, the decision shall be reached that the claimant was discharged but not for gross misconduct. Rather, the evidence indicates that the claimant was discharged for simple misconduct due to her negligence with regard to not beginning proper preparations to pass the math exam in a timely manner due to her failure to understand the deadline for passing the Praxis I exam, which included the problematic area of mathematics for the claimant. Therefore, again, the decision shall be reached that the claimant was discharged for simple misconduct.

DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. Benefits are denied for the week beginning June 18, 2006 and for the four weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is reversed.



C R Morrison, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Notice of Right of Further Appeal

Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by August 28, 2006. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: August 07, 2006

DA/Specialist ID: WHG3T

Seq No: 001

Copies mailed on August 11, 2006 to:

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