

- DECISION -

Claimant:
TYRONE N STEVENSON

Decision No.: 2189-BR-07

Date: October 10, 2007

Appeal No.: 0713705

S.S. No.:

Employer:
DUNBAR ARMORED INC

L.O. No.: 64

Appellant: Claimant

Issue: 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).

- 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 09, 2007

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but reaches a different conclusion of law.

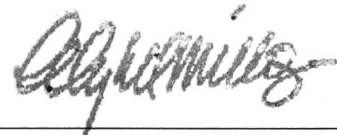
The employer failed to demonstrate that the claimant's actions were wanton or deliberate. Therefore, a finding of gross misconduct is not supported. The claimant did violate a workplace rule or condition of employment by not obtaining a gun permit.

However the Board notes that the employer allowed the claimant to perform services for 14 months without the gun permit. Such an action is tantamount to condonation. Therefore, the Board finds that a finding of misconduct is not supported. Therefore, the Hearing Examiner's decision shall be reversed.


DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon his separation from employment with DUNBAR ARMORED INC.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Copies mailed to:

TYRONE N. STEVENSON
DUNBAR ARMORED INC
DUNBAR ARMORED INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TYRONE N STEVENSON

SSN #

Claimant

vs.

DUNBAR ARMORED 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: 0713705

Appellant: Employer

Local Office : 64 / BALTOMETRO

CALL CENTER

August 15, 2007

For the Claimant : PRESENT

For the Employer : PRESENT , WENDY MAY

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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant had been employed at Dunbar Armored Inc., from April 2006 to June 8, 2007 as a driver.

The claimant was terminated from employment with Dunbar Armored, Inc., because he could not get a handgun permit from the Maryland State Police because he was found guilty of assault in the State of New Jersey. The claimant was found guilty of assault in the State of New Jersey in 1997.

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).

EVALUATION OF EVIDENCE

In a discharge case, the employer has the burden of proof, by a preponderance of the credible evidence to show that the claimant engaged in behavior rising to the level of gross misconduct or misconduct connected with the work. The claimant failing to secure a gun permit by the Maryland State Police as required by his job title as an armored guard constitutes gross misconduct in connection with the work within the meaning of Section 8-1002 of the law.

The determination of the Claim Specialist will be reversed.

DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002(a)(1)(i). The claimant is disqualified from receiving benefits from the week beginning June 3, 2007 and until the claimant becomes reemployed and earns wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the Claims Specialist is reversed.



MI Pazornick, 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 410-767-2404. 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 30, 2007. 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 06, 2007

DW/Specialist ID: RWD2Q

Seq No: 001

Copies mailed on August 15, 2007 to:

TYRONE N. STEVENSON
DUNBAR ARMORED INC
LOCAL OFFICE #64