

- DECISION -

Claimant:
MARIA A D ANTONI

Decision No.: 2341-BR-12

Date: August 15, 2012

Appeal No.: 1204481

S.S. No.:

Employer:
JOHNS HOPKINS BAYVIEW MED CTR

L.O. No.: 65

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: September 14, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's finding of fact. The Board makes the following additional findings of fact and reverses the hearing examiner's decision:

The claimant had received previous warnings regarding her violation of her employer's attendance policy. The claimant's behavior continued and the claimant received a one day suspension regarding this matter.

The claimant was part of a skeleton night crew over the Thanksgiving holiday. This crew was needed in case of an emergency at the hospital. The crew was short staffed and her supervisor had to bring another person in on her day off to meet the staffing requirements.

The claimant did not receive express authorization from a supervisor or manager to leave her shift early. The claimant only told one other employee that she was going to leave early. Her shift was to end at 7:30 a.m. and the claimant left her shift around 4:00 a.m.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Without sufficient evidence of a willful and wanton disregard of an employee's obligations or gross indifference to the employer's interests, there can be no finding of gross misconduct. *Lehman v. Baker Protective Services, Inc., 221-BR-89*. Where a showing of gross misconduct is based on a single action, the employer must show the employee demonstrated gross indifference to the employer's interests. *DLLR v. Muddiman, 120 Md. App. 725, 737 (1998)*.

In determining whether an employee has committed gross misconduct, "[t]he important element to be considered is the nature of the misconduct and how seriously it affects the claimant's employment or the employer's rights." *Dept. of Econ. & Empl. Dev. v. Jones, 79 Md. App. 531, 536 (1989)*. "It is also proper to note that what is 'deliberate and willful misconduct' will vary with each particular case. Here we 'are not looking simply for substandard conduct...but for a willful or wanton state of mind accompanying the engaging in substandard conduct.'" *Employment Sec. Bd. v. LeCates, 218 Md. 202, 207 (1958)*(internal citation omitted); *also see Hernandez v. DLLR, 122 Md. App. 19, 25 (1998)*.

Aggravated misconduct is an amplification of gross misconduct where the claimant engages in "behavior committed with actual malice and deliberate disregard for the property, safety or life of others that...affects the employer, fellow employees, subcontractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's products or services...and consists of either a physical assault or property loss so serious that the penalties of misconduct or gross misconduct are not sufficient."

The failure to follow workplace rules or procedures can constitute gross misconduct. *See, e.g. Kidwell v. Mid-Atlantic Hambro, Inc., 119-BH-86; Ullman v. Anne Arundel County Public Schools, 498-BR-93.*

Attendance violations may constitute gross misconduct. An employer has the right to insist that its employees report to work on time, adhere to a specified schedule and leave only when that schedule has been completed. An employee's decision to follow a come-and-go-as-I-please philosophy could clearly disrupt the orderly operation of the workplace. *Dept. of Econ. Dev. v. Propper, 108 Md. App. 595 (1996)*.

Persistent and chronic absenteeism, where the absences are without notice or excuse and continue in the face of warning constitutes gross misconduct. *Watkins v. Empl. Security Admin., 266 Md. 223 (1972)*. The failure to report or call into work without notice may constitute gross misconduct. *Hardin v. Broadway Services, Inc. 146-BR-89*. Employees who miss a lot of time from work, even for excused reasons, have a heightened duty not to miss additional time for unexcused reasons and to conform with the employer's notice requirements. *Daley v. Vaccaro's Inc., 1432-BR-93*.

The claimant was on notice that further violations of her employer's hospital attendance policy and standards of conduct could lead to further disciplinary action up to and including termination. The credible evidence shows that the claimant did not have clear approval to leave early on the evening of November 24th.


The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the employer met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1002*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

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. The claimant is disqualified from receiving benefits from the week beginning November 11, 2011 and until the claimant becomes re-employed, earns at least twenty times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

MARIA A. D ANTONI

JOHNS HOPKINS BAYVIEW MED CTR

DONNA KLAUZA

JOHNS HOPKINS BAYVIEW MED CTR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARIA A D ANTONI

SSN #

Claimant

vs.

JOHNS HOPKINS BAYVIEW MED CTR

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: 1204481

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

March 09, 2012

For the Claimant: PRESENT

For the Employer: PRESENT, DONNA KLAUZA, JOSE MARIN, JESSICA KOHAJDA

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, Maria A D'Antoni, began working for this employer, Johns Hopkins Bayview Medical Center, a second time on or about May 21, 2007. At the time of separation, the claimant was working as a sterile supply technician. The claimant last worked for the employer on or about December 13, 2011, before being terminated for falsification of time records.

Claimant received a final warning and one day suspension on June 10, 2011 for excessive absenteeism. She continued to have problems with her attendance. On November 23, 2011 claimant was working the 11:30 pm to 7:30 a.m. shift. When she reported for work she signed herself in for 11:30 p.m. and out for 7:30 a.m. However, claimant left early at 3:40 a.m. without permission and did not change her time sheet. Her time sheet was submitted to the payroll department without a change. Claimant was paid for her full shift as well

as for the Holiday (Thanksgiving). You had to work the full shift before the holiday in order to be paid for the holiday. Claimant's manager was told what happened on November 28, 2011, the Monday after Thanksgiving. After his investigation the manager terminated the claimant on December 14, 2011, for violating the employer's policy.

CONCLUSIONS OF LAW

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).

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 show 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.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has been met.

Claimant maintained that she had spoken to the evening supervisor on November 22/23 about leaving early the following night. The supervisor responded to ask her the next day. On November 24 the claimant again asked the evening supervisor if she could leave early. Claimant maintained that she thought that the supervisor gave her OK. However, when claimant's manager conducted his investigation the supervisor denied telling claimant that it was OK to leave early. The evening supervisor was not present for the hearing to testify. Jose Marin, the manager, was present and did testify. I find that the claimant did not have clear approval to leave early and only told one other employee that she was going to leave early while they were


sitting and talking during a down period when the unit was not busy. Claimant acknowledged that she had signed out for 7:30 a.m. when she signed in but that it was done out of habit. She also acknowledged that she did not correct her time sheet when she left early. I find that there was not sufficient testimony to show that the claimant's conduct amounted to gross misconduct but only simple misconduct.

I hold that the claimant committed a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engaged in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises that demonstrates simple misconduct. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.

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 December 11, 2011 and for the (14) fourteen 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.



A S Levy, 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.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

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 March 26, 2012. 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
Phone 410-767-2781

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

Date of hearing: February 16, 2012
BLP/Specialist ID: USB7P
Seq No: 001
Copies mailed on March 09, 2012 to:

MARIA A. D ANTONI
JOHNS HOPKINS BAYVIEW MED CTR
LOCAL OFFICE #65
DONNA KLAUZA