

- DECISION -

Claimant:
EDWARD N LARGE

Decision No.: 2531-BR-06

Date: December 01, 2006

Appeal No.: 0617319

S.S. No.:

Employer:
DUFFY MECHANICAL CORPORATION

L.O. No.: 61

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: January 01, 2007

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the Hearing Examiner's findings of fact but reaches different conclusions of law. The claimant's act of bringing a handgun into the workplace is a dereliction of duty. There does not have to be a specific rule prohibiting handguns in the workplace for the claimant's act to constitute misconduct. The Board does not find mitigating the fact that the handgun was unloaded. The Hearing Examiner's decision shall be reversed.

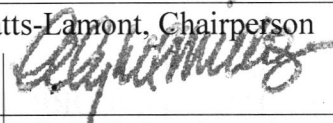
DECISION

It is held that the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article Maryland Code Annotated, Title 8, Section 1003. The claimant is disqualified from receiving benefits from the week beginning February 5, 2006 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:

EDWARD N. LARGE
DUFFY MECHANICAL CORPORATION
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

EDWARD N LARGE

SSN #

Claimant

vs.

DUFFY MECHANICAL CORPORATION

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: 0617319

Appellant: Employer

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

October 23, 2006

For the Claimant : PRESENT

For the Employer : PRESENT , KAREN SCHULZE

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 worked for the employer from December 19, 2005 until February 8, 2006 as a full-time project manager earning \$95,000.00 annually.

The claimant was discharged from his position of record based on the following events: One on February 3, 2006, the claimant brought to work an unloaded handgun. The claimant did so because he wanted to show the gun to a co-worker who also had an interest in guns. However, once the claimant observed that a third co-worker was not uneasy about the gun being at the workplace, he removed the gun from his workplace. The claimant placed the gun in his vehicle and continued to work.

The claimant was scheduled to work Monday, February 7 and February 8, 2006. The claimant was unavailable to work these dates because his daughter was ill. She was hospitalized. On the morning of February 8, 2006, when the claimant was calling into report his unavailability, he spoke with Shawn Duffy. Mr. Duffy advised the claimant that he was dismissed because things were not working out.

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 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.

EVALUATION OF EVIDENCE

The credible evidence establishes that the claimant was discharged. In such a case, the employer bears the burden of establishing, by a preponderance of the evidence, some degree of misconduct on the claimant's behalf. The employer has not met their burden. The claimant was discharged for two occurrences. The claimant acknowledged bringing a gun to the workplace, but he did not have the intent of creating violence at the workplace. This conclusion is supported by the fact that the claimant was allowed to remain at the workplace.

The employer's second reason for discharging the claimant was his attendance. However, regarding the last two occurrences they were justified. The employer was aware of the claimant's personal circumstances regarding his daughter.

Based on the evidence presented, there is insufficient evidence to establish any degree of misconduct. Therefore, the employer has not met their burden and the claimant is eligible for benefits provided that he is in compliance with other provisions of the law.

DECISION

IT IS HELD THAT the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002 or 8-1003. No disqualification is imposed based upon the claimant's separation from employment with Duffy Mechanical Corporation. 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 affirmed.



C. Edmonds, 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 to Petition for Review

Any party may request a review 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 November 08, 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: October 06, 2006

DW/Specialist ID: WCP2D

Seq No: 001

Copies mailed on October 23, 2006 to:

EDWARD N. LARGE
DUFFY MECHANICAL CORPORATION
LOCAL OFFICE #61