

- DECISION -

Claimant:
SULAIMAN MANSARAY

Decision No.: 2608-BR-06

Date: December 08, 2006

Appeal No.: 0615016

S.S. No.:

Employer:
WAL-MART ASSOCIATES INC

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- 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 08, 2007

REVIEW ON THE RECORD

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor Licensing and Regulation's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed from August 1, 2005 until February 28, 2006. The claimant became separated from employment as a result of a discharge.

On February 23, 2006 the claimant was arrested while at work. The claimant remained in jail until June 28, 2006. The employer was on notice that the claimant was incarcerated. While the claimant was in jail he kept in touch with the employer through his sister and by mail.

On June 29, 2006, the day after he was released from jail, the claimant reported to the workplace. The claimant was told by the manager that he had been discharged. As of June 29, 2006 the charges against the claimant were still pending. The claimant had not been convicted of any criminal act when he tried to return to work.

The Board takes judicial notice that the charges for which the claimant was arrested where *Nolle Prosequi* by the Circuit Court of Baltimore County on November 13, 2006. See, *Claimant's Exhibit B1*.

CONCLUSIONS OF LAW

Section 8-1001 of the Labor and Employment Article provides that individuals shall be disqualified from the receipt of benefits where their unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. A circumstance for voluntarily leaving work is valid if it is a substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit or of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment.

The claimant did not quit his employment. The facts of this case establish that the claimant never formed the intent necessary to support a finding of a voluntary quit. The Board has held that no intent to quit can be inferred from a claimant's innocent incarceration. See *Lansinger v. Baltimore County Fire Department*, 1305-BR-82.

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.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from 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, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, *Rogers v. Radio Shack*, 271 Md. 126, 314 A.2d 113).

The claimant was discharged by the employer when he was arrested at the workplace on February 23, 2006. 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 or misconduct as defined in the law. The employer has not met their burden in this case.

The Board of Appeals has long held that a claimant who is incarcerated, provides notice to the employer of the incarceration and against whom the charges are eventually dropped has a good excuse for his absences which were totally beyond his control and a finding of gross misconduct and misconduct is not supported. *Supra, Lansinger.*

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 WAL MART ASSOCIATES INC. Benefits Allowed the week beginning July 3, 2006.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Chairperson

Francis E. Sliwka, Jr., Associate Member

Copies mailed to:
SULAIMAN MANSARAY
WAL-MART ASSOCIATES INC
WAL-MART ASSOCIATES INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SULAIMAN MANSARAY

SSN #

Claimant

vs.

WAL-MART ASSOCIATES 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: 0615016

Appellant: Employer

Local Office : 63 / CUMBERLAND
CLAIM CENTER

September 08, 2006

For the Claimant : PRESENT

For the Employer : PRESENT , SHAWN ROBINSON, BRENDA DOORMAN

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

On February 23, 2006, the claimant was arrested while at work. The claimant was in jail from February 23, 2006 until June 28, 2006. When the claimant visited the employer on June 29, 2006, the manager told the claimant that the claimant was discharged. At the appeals hearing, the employer's position was that the claimant was suspended pending the outcome of the claimant's trial currently scheduled for November 17, 2006. According to the employer, the claimant can return to work if he is acquitted of the charges currently filed against him. The employer's work policy provides that if an associate is suspended without pay pending the outcome of charges and is found not guilty within 12 months from the suspension date, then the associate will be returned to work.

The claimant's correspondence dated March 27, 2006 advised the employer that he was finding it difficult to post bail, and would likely be further detained for another four to six months.

The claimant received a copy of the work policy and/or was aware of the same. The employer made a determination that the charges for which the claimant was arrested (aggravated assault, second degree rape and false imprisonment) would have an adverse affect on others if determined to be true.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual shall be disqualified for benefits where unemployment is due to leaving work voluntarily without good cause arising from or connected with the conditions of employment or actions of the employer, or without valid circumstances. A circumstance is valid only if it is "(i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment."

EVALUATION OF EVIDENCE

The claimant separated from the employer when he became unavailable to continue to report to work. The immediate cause of his separation from work was his inability to report to work, as scheduled. The employer had work for the claimant and until the claimant was arrested on February 23, 2006, had not taken any action nor had it made any decision to terminate the claimant.

The question next presented is whether there is good cause or valid circumstances for the claimant's separation from work. The claimant was absent from his job for four months. The claimant was aware of the employer's work policy which provides that an individual is to return to work only if acquitted of charges which could affect the work environment. Under these circumstances, it is concluded that the claimant has failed to establish either good cause or valid circumstances for his separation from work.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning February 19, 2006 and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of the Claims Specialist is reversed.



G R Smith, 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 September 25, 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 30, 2006

DW/Specialist ID: WCU42

Seq No: 001

Copies mailed on September 08, 2006 to:

SULAIMAN MANSARAY

WAL-MART ASSOCIATES INC

LOCAL OFFICE #63

WAL-MART ASSOCIATES INC