

- DECISION -

Claimant:
DEMMIE S WOOD

Decision No.: 2885-BR-11

Date: August 22, 2011

Appeal No.: 1102531

S.S. No.:

Employer:
THREE LOWER COUNTIES COMMUNITY
SERVICES INC

L.O. No.: 65

Appellant: Employer

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: September 21, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant worked for Three Lower Counties Community Services., Inc. from December 11, 2007 until December 3, 2010 as a fulltime cash manager earning \$16.54 per hour.

The claimant was told by her employer on December 2, 2010 that her position was being eliminated. The employer offered the claimant two positions at the same hours, distance (one of the positions was closer to where the claimant lived) and pay but in a different field. Both positions were entry level.

The claimant was required to respond to her employer the next day, December 3, 2010. The other positions would start on Monday December 6, 2010. Her current position, effectively, would be eliminated at the close of business December 3, 2010. The claimant left on December 3, 2010.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

It is a necessary element of “voluntarily leaving work” that the employee have the intent to terminate the employment relationship voluntarily. *Department of Economic and Employment Development v. Taylor, 108 Md. App. 250, 671 A.2d. 523 (1996)*. *Aff'd sub nom. Department of Labor, Licensing & Regulation, 344 Md. 687, 690 A.2d 508 (1997)*

In a discharge case, the employer has the burden of demonstrating that the claimant’s actions rise to the level of misconduct, gross misconduct or aggravated misconduct based upon a preponderance of the credible evidence in the record. *Hartman v. Polystyrene Products Co., Inc., 164-BH-83; Ward v. Maryland Permalite, Inc., 30-BR-85; Weimer v. Dept. of Transportation, 869-BH-87; Scruggs v. Division of Correction, 347-BH-89; Ivey v. Catterton Printing Co., 441-BH-89*.

As the Court of Appeals explained in *Department of Labor, Licensing and Regulation v. Hider, 349 Md. 71, 82, 706 A.2d 1073 (1998)*, “in enacting the unemployment compensation program, the legislature created a graduated, three-tiered system of disqualifications from benefits based on employee misconduct. The severity of the disqualification increases in proportion to the seriousness of the misconduct.”

Dept. of Labor, Licensing & Regulation v. Boardley, 164 Md. 404, 408 fn.1 (2005).

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).

Simple misconduct within the meaning of § 8-1003 does not require intentional misbehavior. *DLLR v. Hider*, 349 Md. 71 (1998); also see *Johns Hopkins University v. Board of Labor, Licensing and Regulation*, 134 Md. App. 653, 662-63 (2000)(psychiatric condition which prevented claimant from conforming his/her conduct to accepted norms did not except that conduct from the category of misconduct under § 8-1003). Misconduct must be connected with the work; the mere fact that misconduct adversely affects the employer's interests is not enough. *Fino v. Maryland Emp. Sec. Bd.*, 218 Md. 504 (1959). Although not sufficient in itself, a breach of duty to an employer is an essential element to make an act connected with the work. *Empl. Sec. Bd. v. LeCates*, 218 Md. 202 (1958). Misconduct, however, need not occur during the hours of employment or the employer's premises. *Id.*

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."

In the instant case, the claimant did not voluntarily leaves her position. The employer eliminated the claimant's position, thus, effectively discharging the claimant.

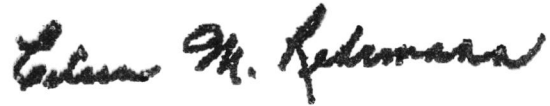
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant was discharged but for no misconduct within the meaning of *Maryland Code Annotated, Labor & Employment Article §8-1002 or §8-1003*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

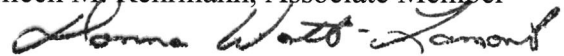
DECISION

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 the claimant's separation from employment with THREE LOWER COUNTIES COMMUNITY SERVICES, INC.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

DEMMIE S. WOOD
THREE LOWER COUNTIES COMMUNITY
THREE LOWER COUNTIES COMMUNITY
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DEMMIE S WOOD

SSN #

Claimant

vs.

THREE LOWER COUNTIES COMMUNITY
SERVICES 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: 1102531

Appellant: Claimant

Local Office : 65 / SALISBURY
CLAIM CENTER

February 17, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, LISA CANSON

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 1001 (Voluntary Quit for good cause), 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), or 1003 (Misconduct connected with the work).

FINDINGS OF FACT

The claimant, Demmie S. Wood, began working for Three Lower Counties Community Services Inc, on December 11, 2007 and her last day of work was December 3, 2010. At the time of her voluntary quit, the claimant worked full-time performing cash management duties, and earned \$16.54 per hour. The claimant voluntarily quit her position with this employer.

The claimant had the responsibility of taking all payments collected from 17 different departments and reconciling the daily receipt statements, as well as reconciling the monthly bank statements. On December 2, 2010, the employer told the claimant that her position was being eliminated. The employer offered the

claimant a choice of two new positions as a customer service representative. One of the positions would be a filing position and the other position was as a scheduler. Both positions were entry level positions and involved direct contact with patients. Even though the positions were entry level, the employer offered to pay the claimant the same hourly wage. Neither position would involve commuting any farther than the claimant already drove to work.

The claimant decided that she did not want to accept an entry level position because her job skill set was far more advanced. The claimant left on December 3, 2010.

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 had the burden to show, by a preponderance of the credible evidence, that she voluntarily quit her position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant met this burden.

The claimant, after performing satisfactorily for a long period of time the duties for which she was hired, was required to perform sales duties, which were different duties than those for which she was hired. She was unsuited for sales and refused, though she offered to continue to perform the duties for which she was hired. Her refusal to accept this new position constitutes a voluntary quit, but for good cause. Myers v. Terrance M. McLarney, 423-BR-93.

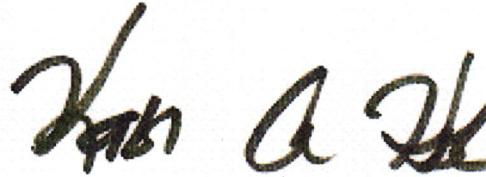
In the present case, the record reflects that the claimant's current position was being eliminated by the employer. The employer liked the claimant and wanted to keep her employed. However, the only available positions were entry level only, and the claimant's job skills were beyond that level. The claimant did not want to begin a new career.

Accordingly, I hold the met her burden in this case and the claimant's reasons for her voluntary quit constitute good cause. Benefits shall be allowed.

DECISION

IT IS HELD THAT the claimant left the employment voluntarily but with good cause within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. No disqualification is imposed based upon this separation from this employment. The claimant is eligible for benefits so long as all 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.



K A Holmes, 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 10, 2011. 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 15,2011

DAH/Specialist ID: USB39

Seq No: 003

Copies mailed on February 23, 2011 to:

DEMMIE S. WOOD

THREE LOWER COUNTIES COMMUNITY

LOCAL OFFICE #65