

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	311-BR-92
	Date:	Feb. 14, 1992
Claimant: Lina P. Wang	Appeal No.:	9118834
	S. S. No.:	
Employer: MDS Distributions Services c/o The Frick Company	L. O. No.:	43
	Appellant:	EMPLOYER

Issue:

Whether the claimant was discharged for misconduct, connected with her work, within the meaning of Section 8-1003 of the Labor and Employment Article; whether the claimant left work voluntarily without good cause, within the meaning of Section 8-1001 of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

March 15, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

In May of 1991, the claimant was given a marginal rating on her performance evaluation. She was given a 60-day period in which to improve her performance to management standards. She was told that, if she wished to search for other jobs, either within the company or without it, she would be allowed reasonable time off for interviews.

On July 12, 1991, the claimant was told that she hadn't made a significant enough improvement. She was told that this lack of improvement could be grounds for termination. The claimant immediately resigned.

On July 17, however, in a meeting with higher management, it was decided that the claimant had not had close enough supervision during her 60-day period. The claimant was given an additional 90-day period in which to improve. During this 90 days, the claimant would be subject to very close supervision.

The claimant resigned because she did not want to work under this close supervision and because she felt that she would not be capable of meeting company standards within the additional 90 days. The claimant felt that she was supervised too closely at times, and that at other times she was left alone without adequate supervision. The claimant failed to prove, however, that there was anything wrong with her supervision; no findings of fact can be made that the supervision was inappropriate.

The claimant voluntarily quit her job when she was placed on an additional 90-day probation for poor work performance. No matter how futile it might have seemed to the claimant to complete the probation, the fact remains that she quit and was not fired.

An employee who has quit has the burden of showing that she has "good cause" or "valid circumstances" for quitting, under Section 8-1001 of the law. The claimant has not shown either good cause or valid circumstances. The claimant's job performance was inadequate, and the employer was going to supervise the claimant for a period of 90 days in an attempt to see if she could do the job with this additional help. The employer's actions were not unreasonable, and the claimant's decision to leave while the employer was giving her another lengthy trial period was premature and unreasonable. Her reason for leaving amounts to neither good cause nor valid circumstances.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor Employment Article. She is disqualified from receiving benefits from the week beginning August 4, 1991 and until she becomes re-employed, earns at least her weekly benefit amount (\$2,230), and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Randy Kleinert
Human Resources Services &
consultation
7982 Honeygo Blvd., Ste. 23
Baltimore, MD 21236

UNEMPLOYMENT INSURANCE - WHEATON

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor

J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	Lina P. Wang	Date:	Mailed: 11/20/91
		Appeal No.:	9118834
		S. S. No.:	
Employer:	MDS Distributions Services, Inc. c/o Frick Company	L.O. No.:	43
		Appellant:	Employer

Issue:

Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT OR WITH THE APPEALS DIVISION, ROOM 515 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201. EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

December 5, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

Win Redmond,
vice President;
David Sacks,
Technical Services
Manager;
Randy Kleinert,
Frick Company

FINDINGS OF FACT

The claimant was employed by MDS Distributions Services, Inc. from May, 1990 through August 1, 1991.

In May of 1991, the claimant was given a formal evaluation in which her work was determined to be marginal and not up to division standards. This was discussed with the claimant, and the claimant was placed on a sixty-day probationary period. During that sixty days, the claimant would attempt to be transferred to another area, and would be given time off for interviews. The claimant was unable to find another position with the Marriott Corporation, of which MDS Distributions Services, Inc. is a division.

On July 12, 1991, the claimant was told by the technical service manager that he was completing the evaluation for the end of the sixty-day period. The claimant resigned at that time, but was told that she could appeal pursuant to the employer's policies, which she did. It was decided that the claimant would be placed in a ninety-day probationary period, in which she would be constantly supervised and evaluated. Under this program, there would be better counseling and a better action plan for the claimant to adhere to. The claimant chose to resign because she did not want to work under these conditions.

The claimant was in a difficult situation because she had no job description until the evaluation. The claimant agreed with the evaluation and was told that she did not have to agree with it, but she and her supervisor had a mutual agreement for the claimant to look for another position. The claimant found it very difficult to work with the technical services manager and felt if she could not improve in sixty days, she could not improve in ninety days.

The claimant is currently employed.

CONCLUSIONS OF LAW

Based upon the testimony presented at the appeals hearing, it is concluded that the claimant did not voluntarily leave her employment, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1001. This is because the claimant did not want to work through another ninety-day evaluation period, when her performance had not improved in a sixty-day probationary period. Thus, we must look at the reasons for the employer's second probationary period to determine if there was any misconduct that resulted in her separation from employment.

The Maryland Code, Labor and Employment Article, Title 8, Section

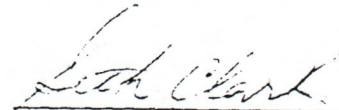
1003(a)(b) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

Based upon the testimony presented, the employer has failed to meet its burden of proving that the claimant's behavior was misconduct, within the meaning of the Law. They have not proven that the claimant intentionally violated any work policies, especially when the claimant did not have a copy of her job description until the first probationary period, which was after she had worked there a year. The employer has failed to prove that there was any deliberate or willful wrongdoing on the part of the claimant, and therefore, no misconduct within the meaning of the Article will be found. The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged, but not for any misconduct connected with the work, within the meaning of the Maryland Code, Labor and Employment Article, Title 3, Section 1003. No disqualification is imposed based upon her separation from employment with MDS Distributions Services, Inc.

The determination of the Claims Examiner is affirmed.


Seth Clark
Hearing Examiner *2-11*

Date of Hearing: 11/14/91
alma/Specialist ID: 43726
Cassette No.: 11241
Copies mailed on 11/20/91 to:

Claimant
Employer
Unemployment Insurance - Wheaton (MABS)

Human Resources Services & Consultation
Attn: Randy Kleinert
Suite 23