

STATE OF MARYLAND

PARRIS N. GLENDENING  
Governor

FRANK W. STEGMAN  
Secretary



Department of Labor, Licensing  
and Regulation

Board of Appeals  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
(410) 767-2781  
FAX (410) 767-2787

**- DECISION -**

Claimant:  
WALTER TOY

Employer:  
MONTGOMERY CO GOVERNMENT

Decision No.: 03205-BR-95

Date: September 14, 1995

Appeal No. : 9510032

S.S. No.:

L.O. No.: 50

Appellant: Employer

Issue: Whether the claimant was discharged for aggravated misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1002.1.

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**- 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: October 14, 1995

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REVIEW ON THE RECORD

The Board adopts the findings of fact of the hearing examiner, but reaches a different conclusion of law.


The mere fact that the claimant was not technically in violation of the agreement reached between the claimant and his union with the employer, does not preclude the Board from a finding of gross misconduct. Such an agreement is not binding upon the Board of Appeals.

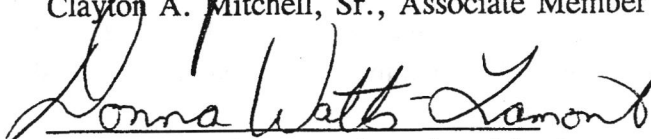
The Board finds that it is clear from the claimant's pattern of repeated violations of the employer's attendance policy (up to and including the last incident where the claimant reported to work four and one-half hours late due to "oversleeping") that the claimant's repeated violations amount to a regular and wanton disregard of his obligations to his employer, rising to the level of gross misconduct.

### DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning February 26, 1995 and until he becomes reemployed, earns at least twenty times his weekly benefit amount (\$4460) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
Clayton A. Mitchell, Sr., Associate Member

  
Donna Watts-Lamont, Associate Member

kjk

Copies mailed to:

WALTER TOY  
MONTGOMERY CO GOVERNMENT  
MONTGOMERY CO GOVERNMENT  
Local Office - #50

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

WALTER TOY  
1629

SSN #

**Claimant**

vs.

MONTGOMERY CO GOVERNMENT  
PERSONNEL/EMPLOYEE SERVS  
101 MONROE ST 8TH FLR  
ROCKVILLE, MD 20850-2540

**Employer/Agency**

Before the:

**Maryland Department of Economic and  
Employment Development**

**Appeals Division**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 9510032

Appellant: Employer

Local Office: 07 / College Park

June 20, 1995

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, MONTGOMERY CO GOVERNMENT, WILLIAM  
SILVERBERG, PIXIE ALLAN

**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 1003 (misconduct connected with the work).

### **FINDINGS OF FACT**

The claimant was a full-time equipment operator for the employer who worked from 1988 until April 14, 1995. That was the effective date of his termination but his last day of work was March 3, 1995.

The claimant exhibited some tardiness which resulted in a settlement agreement between the claimant, his union representatives and the employer. The employer established that between June and December, 1994, the claimant was late or absent on twelve different occasions. On most of these occasions the claimant called the employer but often times after his starting time of 7:30 am.

The settlement agreement provided that for an eighteen month period commencing with the claimant's to work which was in December, 1994, the claimant must provide medical certification for each instance of sick leave usage in excess of one day per month. The claimant also could not have more than two lateness incidents.

On March 2, 1995 the claimant was to report to work at 7:30 am. At 9:30 am the claimant called stating that he had overslept and he reported to work at 11:30 am. On March 3, the claimant arrived to work at about 12:00 pm stating that he had overslept.

The employer contended these two incidents were in violation of paragraph 8 of the settlement agreement and resulted in his immediate termination.

### CONCLUSIONS OF LAW

Md. Code An., Labor & Emp., Section 8-1003 (Supp. 1994) provides for a limited 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 judicially defined as a ". . . 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." Rogers v. Radio Shack, 271 Md. 126, 132, 314 A.2d 113 (1974).

It has been held that as a condition of employment, an employer has the right to expect its workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detainment or emergency, to receive prompt notification thereof. See, Rogers, sums. Failure to meet this standard amounts to misconduct within the meaning of Section 8-1003.

The settlement agreement states that the claimant cannot exceed two tardy incidents during the term of this agreement. The settlement agreement provides that to exceed two tardy incidents constitutes a violation of this agreement and will result in the claimant being placed on suspension and a statement of charges for dismissal being issued.

The employer established that the claimant was tardy on two different occasions. However the employer did not establish that the claimant exceeded two tardy incidents. Interpreting the terms of the settlement agreement leads one to conclude that if the claimant had been tardy a third occasion, then he would have violated the settlement agreement.

Because it is found that he did not violate the settlement agreement, there is no finding of gross misconduct in this case.


There is also no finding of gross misconduct even if he had violated the settlement agreement because although he was late on various occasions, he is a long-term employee and his past history does not disclose an overly excessive absenteeism problem. In this respect, although he was late or absent on twelve different occasions on the dates produced by the employer, this was also during a seven month period. Also he called the employer virtually all the times that he was late or absent from work.

However it is found that the claimant was discharged for misconduct in connection with the work. As noted above, an employer has the right to expect its workers to report to work regularly, on time and as scheduled.

### DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code An., Labor & Emp., Section 8-1003 (Supp. 1994). Benefits are denied for the week beginning (Sunday) February 26, 1995 and for the nine weeks immediately following.

The determination of the claims examiner is reversed.



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G. R. Smith, ESQ  
Hearing Examiner

### Notice of Right of Further Appeal

Any party may request further appeal **either in person or by mail** which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **July 5, 1995**

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

Date of hearing: June 14, 1995

TH/Specialist ID: 50507

Seq. No.: 003

Copies mailed on June 20, 1995 to:

WALTER TOY  
MONTGOMERY CO GOVERNMENT  
LOCAL OFFICE #50