

***-DECISION-***

Claimant:  
MEGHAN N TACCINO

Decision No.: 3323-BH-14

Date: February 11, 2015

Appeal No.: 1411114

Employer:  
CITY OF HAGERSTOWN

S.S. No.:

L.O. No.: 63

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.

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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: March 13, 2015

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**- APPEARANCES -**

FOR THE CLAIMANT:  
Meghan N. Taccino

FOR THE EMPLOYER:  
James Stuller UTS (REP)

**EVALUATION OF EVIDENCE**

This matter was scheduled for a continued hearing before the Board of Appeals ("Board") on Tuesday, December 9, 2014 at 11:00 a.m. EST. pm. The claimant and the employer's representative appeared at the hearing.

The matter before the Board was whether the claimant was discharged for gross misconduct or misconduct connected with the work within the meaning of *Maryland Annotated, Labor & Employment Article 8, § 8-1002 or 8-1003*. In the hearing notice, the Board noted its interest in legal arguments on the following issues: Did the claimant have a reasonable expectation of privacy for the message that the claimant posted on her *Facebook* page? ; How many *Facebook* friends was the message disseminated to?; Is there a limit to the amount of *Facebook* friends a person can disseminate to before the reasonable expectation of privacy (assuming it exists) becomes unreasonable? ; What specific measures did the claimant take to keep her *Facebook* page private? ; What was the *Facebook* privacy policy on the date that the claimant disseminated the message?

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)*.

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

In the instant case both parties are in agreement that the claimant made a disparaging remark about a segment of the city's population. As such the Board need not address the issue of an expectation of privacy on *Facebook*.

In a similar case the Board held, while negative comments about one's job conditions are generally not considered misconduct, in that case, the claimant's comments were a direct violation of his duty to his employer and the residents he was there to counsel. The claimant knew or should have known that his remarks would severely undermine the morale of the residents. The claimant was discharged for gross misconduct. *Fetty v. Changing Point, Inc., 918-BR-89*.

In the instant case, the claimant was in a customer support position and the claimant knew that her actions were reflective of the city's ability to provide services to its citizens. The claimant was expected to provide superior customer service and to be professional under stressful circumstances. (*See Employer's Exhibit 1*). Describing people who do not pay their electric bills as "scum" was disparaging and harmed the city government's reputation and the citizen's expectation of delivery of public services.

The credible evidence established that the claimant's remarks resulted in a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and showed a gross indifference to the interests of the employer.

### FINDINGS OF FACT

The claimant was employed as a part-time customer support worker from April 8, 2013 until April 4, 2014, earning \$12.00 per hour. The claimant became separated from this employment as a result of a discharge for misconduct.

The claimant requested a day off for April 4, 2014 several weeks in advance so that the claimant could accompany her son on a school field trip. The claimant made arrangements to take the school field trip even though the claimant had not yet received approval for the requested time off. The claimant's leave request was not approved because on April 1, 2014, the city would begin shutting off power for non-paying electric customers after the heating season ended. Three days before the planned trip, the claimant checked on her request for the time off. The claimant was informed that the request was denied due to the heavy volume of calls that the city expected from the cut-off notices.

When the claimant was informed that her leave was not approved the claimant became very upset. On her own time and on her own computer, the claimant posted the message that she was "Super pissed I should be headed to Annapolis with hayden [sic] on a field trip. Instead I'm stuck going to work because all the low ratchet [sic] scum of Hagerstown can't pay their electric bills!!!!!!". One of the claimant's *Facebook* friends saw the posting, became upset with the disparaging remark and complained to the Mayor's office.

Consequently, the claimant was discharged for conduct unbecoming a city employee and disorderly conduct.

### CONCLUSIONS OF LAW

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002* provides:

- (a) Gross misconduct...
  - (1) Means conduct of an employee that is:
    - i. 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
    - ii. repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations...

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).

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003* provides:

- (a) Grounds for disqualification – an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that unemployment results from discharge or suspension as a disciplinary measure for behavior that the Secretary finds is misconduct in connection with employment but that is not:
- (1) Aggravated misconduct...or
  - (2) Gross misconduct...

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 the employment relationship, during hours of employment or on the employer's premises, within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003*. (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).

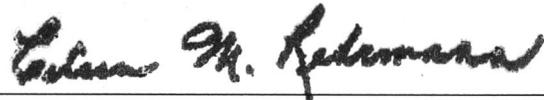
The Board finds, based upon a preponderance of the credible evidence, that the employer met its burden of proof and showed that the claimant was discharged for gross misconduct within the meaning of *Md.*

*Code Ann., Lab. and Empl. Art., §8-1002.* The decision shall be reversed, for the reasons stated herein and in the hearing examiner's decision.

**DECISION**

The Board holds that the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002.* The claimant is disqualified from the receipt of benefits from the week beginning the week of March 30, 2014, and until the claimant has become reemployed, earned twenty-five times her weekly benefit amount, and then become unemployed under non-disqualifying conditions.

The Hearing Examiner's decision is Reversed.



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Eileen M. Rehrmann, Associate Member



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Donna Watts-Lamont, Chairperson

VD

Date of hearing: December 09, 2014

Copies mailed to:

MEGHAN N. TACCINO

CITY OF HAGERSTOWN

JAMES A. STULLER

CITY OF HAGERSTOWN

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

MEGHAN N TACCINO

SSN #

**Claimant**

vs.

CITY OF HAGERSTOWN

**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: 1411114

Appellant: Employer

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

May 28, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, JAMES A. STULLER, KAREN PAULSON

**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, Meghan N. Taccino, worked for the City of Hagerstown from April 8, 2013 until April 4, 2014. The claimant earned \$12.00 per hour while working part time in customer support.

On April 4, 2014, the claimant was scheduled to accompany her son on a school field trip. She sought the day off from work several weeks in advance. She was not told her leave was approved because beginning April 1, 2014 the employer would become busy with shutting off power for non-paying electric customers after the heating season ended. The city of Hagerstown is the electric utility for residents of the city. The claimant made arrangements to take the school field trip while her leave had not yet been approved. About

three (3) days prior to her planned trip with her son, the claimant asked if her leave was approved and was informed that it was not because of the press of business associated with shutting off power for non-paying residents.

The claimant was upset because she could not go with her son on his field trip. The claimant, on her own time and using her own computer equipment and provider, posted on her private Facebook page that she had to work "because all the low ratchet [sic] scum of Hagerstown can't pay their electric bills!!!!!!!" Only people designated as "friends" could view her Facebook page and one of them was a non-paying customer who became upset with the claimant's Facebook post and called the Mayor's Office.

The employer terminated the claimant for conduct unbecoming a city employee and disorderly conduct because she disparaged the group of city residents who could not or would not pay their electric bills.

### CONCLUSIONS OF LAW

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.

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).

### EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has not been met.

The employer did not produce its written policies that prohibited employee conduct that is either "unbecoming" or "disorderly." These terms, in any event, are undefined in the employer's policies. It cannot therefore be determined if the claimant's improvident comments made in private to a group of internet friends is "unbecoming" or "disorderly." Lumping non-paying debtors together as "scum" is perhaps unfair. However, the comments were intended to be private and were made on the claimant's time and on her own computer equipment unconnected with the work. Under these circumstances, the claimant had some freedom of expression to make an ill-advised and offensive statement on her own time while not doing the employer's business.

I hold that the claimant did not commit a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engage in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises. No unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.

### DECISION

IT IS HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. No disqualification is imposed based upon the claimant's separation from employment with the above-identified employer. The claimant is 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](mailto: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.

*B. Taylor*

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B. Taylor, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 June 12, 2014. 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: May 19, 2014  
DW/Specialist ID: WCU60  
Seq No: 001  
Copies mailed on May 28, 2014 to:

MEGHAN N. TACCINO  
CITY OF HAGERSTOWN  
LOCAL OFFICE #63  
JAMES A. STULLER  
CITY OF HAGERSTOWN