

**- DECISION -**

Claimant:  
GARY INGEGNO

Decision No.: 3465-BR-12

Date: August 08, 2012

Appeal No.: 1207537

S.S. No.:

Employer:  
RELIANCE AEROTECH SERVICES

L.O. No.: 65

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.

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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: September 07, 2012

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant felt that he was being harassed by the on-site supervisor. He had complained and the client met to try to resolve the problems. The claimant did not contact the employer when he believed the harassment was continuing.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

The burden of proof in this case is allocated according to whether the claimant voluntarily quit or whether the employer discharged the claimant. 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*.

When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances based upon a preponderance of the credible evidence in the record. *Hargrove v. City of Baltimore, 2033-BH-83*; *Chisholm v. Johns Hopkins Hospital, 66-BR-89*. Purely personal reasons, no matter how compelling, cannot constitute good cause as a matter of law. *Bd. Of Educ. Of Montgomery County v. Paynter, 303 Md. 22 (1985)*. An objective standard is used to determine if the average employee would have left work in that situation; in addition, a determination is made as to whether a particular employee left in good faith, and an element of good faith is whether the claimant has exhausted all reasonable alternatives before leaving work. *Board of Educ. v. Paynter, 303 Md. 22 (1985)*; also see *Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. The "necessitous or compelling" requirement relating to a cause for leaving work voluntarily does not apply to "good cause". *Board of Educ. v. Paynter, 303 Md. 22 (1985)*.

The intent to discharge or the intent to voluntarily quit can be manifested by words or actions. "Due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity. It expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally and of his or her own free will, terminated the employment. *Allen v. Core Target Youth Program, 275 Md. 69 (1975)*. A claimant's intent or state of mind is a factual issue for the Board of Appeals to resolve. *Dept. of Econ. & Empl. Dev. v. Taylor, 108 Md. 250(1996), aff'd sub. nom., 344 Md. 687 (1997)*. An intent to quit one's job can be manifested by actions as well as words. *Lawson v. Security Fence Supply Company, 1101-BH-82*. A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp., 973-BR-88*.

The intent to discharge can be manifested by actions as well as words. The issue is whether the reasonable person in the position of the claimant believed in good faith that he was discharged. *See Dei Svaldi v. Martin Taubenfeld, D.D.S., P.A., 1074-BR-88* (the claimant was discharged after a telephone conversation during which she stated her anger at the employer and the employer stated to her, "If that's the way you feel, then you might as well not come in anymore." The claimant's reply of "Fine" does not make it a quit). *Compare, Lawson v. Security Fence Supply Company, 1101-BH-82*. A quit in lieu of discharge is a discharge for unemployment insurance purposes. *Tressler v. Anchor Motor Freight, 105-BR-83*.

The threshold issue in this case is whether the claimant voluntarily quit or was discharged. For the following reasons, the Board reverses the hearing examiner's decision on this issue.

The evidence established that the claimant quit his position with the employer's client. The claimant did not sever the employment relationship with the actual employer here. As a result of the manner in which he quit the assignment, the employer discharged him from further employment assignments. The employer initiated the actual separation from employment making this a discharge. The facts should have been analyzed under the law relative to a discharge.

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, 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 his appeal, the claimant reiterates his contention from the hearing that he had good cause for quitting his employment. However, as noted above, the claimant did not quit his employment; the claimant quit his assignment with a client of this employer. The employer was a temporary placement firm. The employment relationship survives during periods between assignments unless otherwise severed. The fact that the claimant quit his assignment did not automatically sever his employment relationship with the employer, except for the way in which he quit the assignment. Because the claimant walked off the assignment without notice to the employer, he was subsequently discharged by the employer.

The claimant also contends he was “...disallowed my witness...” The claimant never made any request to have a witness testify. The claimant did not subpoena a witness and did not proffer what, if any, relevant testimony that witness would have presented.

The claimant further contends that the employer’s testimony should have been precluded because the employer called late into the hearing. The employer initially had used an incorrect telephone number for the hearing. The claimant had only testified for about three minutes when the employer was joined into the conference call. The claimant was allowed to complete his testimony without further interruption. There was no undue prejudice to the claimant by allowing the employer to participate in the hearing.

The Board notes that even if, in fact, the claimant had been able to show good cause for his decision to quit the assignment, he would not be able to overcome the fact that he did not take the appropriate steps to preserve his employment with this employer. The claimant failed to attempt to take any remedial actions or otherwise notify the employer of the problems he believed were occurring at work. That was either a deliberate, or grossly negligent, disregard for the employer’s interests and expectations. As such, the claimant was discharged for gross misconduct under Maryland law.

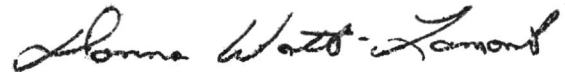
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the employer met its burden of demonstrating that the claimant’s actions rose to the level of gross misconduct within the meaning of §8-1002. The decision shall be reversed for the reasons stated herein.

**DECISION**

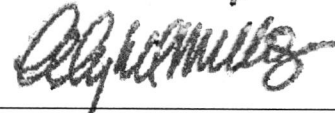
It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning January 29, 2012, and until the claimant becomes re-employed, earns at least twenty-five times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

GARY INGEGNO

RELIANCE AEROTECH SERVICES

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

GARY INGEGNO

SSN #

**Claimant**

vs.

RELIANCE AEROTECH SERVICES

**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: 1207537

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

March 29, 2012

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, PAM CARROLL, BRYNA GASTLEY, DARRELL MOONEY

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

**FINDINGS OF FACT**

The Claimant was employed with Reliance Aerotech Services (Employer), from January 17, 2012 until February 1, 2012 as a helicopter technician. He earned \$26.71 per hour. Upon the Claimant's separation from employment, he filed a claim for unemployment insurance benefits and established a benefit year begin date of October 10, 2011. His weekly benefit amount is \$430.00.

The Employer is an agency that assigns workers to work for its clients, on a temporary basis, at various locations. When an employee is hired, the Employer provides a new hire packet that includes contact information so that, in the event a problem arises on a job site, the employee knows who at the Employer's headquarters he/she may speak with. When the Claimant was hired, he was instructed that, if a problem



arose at a job site, he should contact Darrell Mooney, Program Manager.

On January 17, 2012 the Employer assigned the Claimant to work for its client Defense Support Services in Manassas Virginia.

On February 1, 2012, during the Claimant's shift he turned in his identification badge and walked off the job site. The Claimant did not return to work.

Prior to February 1, 2012, the Claimant did not contact Mr. Mooney or anyone else at the Employer's office to inform them that there was any problem on the job site.

The Employer has a policy that, when an employee walks off the job, the employee is subject to immediate termination without eligibility to be rehired.

The Claimant was terminated on February 1, 2012 for walking off the job.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Empl. Article, Section 8-1001 (2008) 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. Md. Code Ann., Labor & Empl. Article, Section 8-1001(c)(i & ii) (2008).

### **EVALUATION OF EVIDENCE**

In reaching this decision, I considered the testimony of the Employer's witness, Pam Carroll, Vice President and Director of Finance and Administration, as well as that of the Claimant.

The Claimant argued that he left work on February 1, 2012 because his supervisor was harassing him. The Claimant has the burden to show by a preponderance of the evidence that he voluntarily quit his position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has not been met.

Ms. Carroll testified credibly regarding the circumstances of the Claimant's separation from his employment. She explained that, on February 1, 2012, during the Claimant's shift, he simply turned in his employee badge and walked off the job. Ms. Carroll testified that, after this, the Claimant never returned to work. She explained that the Claimant never complained to her, to Mr. Mooney, or to anyone else in the Employer's office, that he was being harassed in any way. If he had, she stated, the Employer would have taken action to investigate and take any appropriate action.

The Claimant admitted that he left the job during his shift on February 1, 2012. He stated that he left because he was being verbally attacked and harassed by his supervisor and that this was a pattern that had been formed since he started the job. He testified that he mentioned to his recruiter, "Sue," that he had been

having the problems, but that he did not tell anyone else because he was never told to contact anyone.

I found the Claimant's testimony to be self-serving and non-credible. Ms. Carroll testified credibly that, when she found out for the first time, in the Unemployment Insurance process, that the Claimant was alleging harassment, she asked "Sue," or Suzanne Peters, the Employer's recruiter in Pensacola, Florida, if she knew anything about any alleged harassment, and Suzanne did not.

The Claimant voluntarily quit his job when he walked off the job site and never returned. The Claimant failed to meet his burden of showing that his voluntary separation was for good cause or valid circumstances.

### 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 & Empl. Article, Section 8-1001 (2008). Benefits are denied for the week beginning January 29, 2012, and until the Claimant becomes reemployed and earns at least 15 times his weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the Claimant.

The determination of the Claims Specialist is reversed.

*N Friedman*

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N Friedman  
Administrative Law Judge

### 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 April 13, 2012. 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: March 23, 2012

BLP/Specialist ID: USB2A

Seq No: 004

Copies mailed on March 29, 2012 to:

GARY INGEGNO  
RELIANCE AEROTECH SERVICES  
LOCAL OFFICE #65