

- DECISION -

Claimant:
STEWART K SMITH JR

Decision No.: 387-BR-01

Date: February 27, 2001

Appeal No.: 0019613

S.S. No.:

Employer:
MADISON WAREHOUSE CORP

L.O. No.: 64

Appellant: Claimant

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.

- 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 29, 2001

REVIEW ON THE RECORD

Upon review of the record in this case, The Board adopts the findings of fact of the hearing examiner but reaches a different conclusion of law.

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.

Maryland Code, Labor and Employment Article, Title 8, Section 1002.1(a) provides aggravated misconduct means "behavior committed with actual malice and deliberate disregard for the property, safety, or life of others that:

- i. Affects the employer, fellow employees, sub-contractors, invitees of the employer, members of the public or the ultimate consumer of the employer's product or services; and
- ii. Consists of either physical assault or property loss or damage so serious that the penalties of misconduct or gross misconduct are not sufficient.

The claimant was in a position of trust with the employer. The claimant ordered a vendor to make three checks payable to the order of the claimant for the sale of the employer's property. The checks should have been payable to the employer. The claimant cashed and converted to his own use one of the checks. The Board finds that such an action is sufficient to support a finding of "actual malice" required under Section 8-1002.1. Therefore, the Board reverses the decision of the hearing examiner and concludes that a finding aggravated misconduct within the meaning of Section 8-1002.1 is warranted in the instant case.

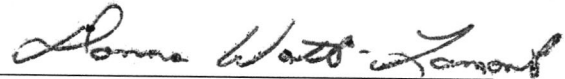
DECISION

It is held that the claimant was discharged for aggravated misconduct, connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1. He is disqualified from receiving benefits from the week beginning October 29, 2000 and until the claimant earns thirty times his weekly benefit amount and thereafter becomes re-employed.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Copies mailed to:

STEWART K. SMITH JR
MADISON WAREHOUSE CORP
LOCAL OFFICE #64
CANTON WAREHOUSE CO
Michael Taylor, Legal Counsel OUI

UNEMPLOYMENT INSURANCE APPEALS DECISION

STEWART K SMITH JR

SSN #

Claimant

vs.

MADISON WAREHOUSE CORP

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: 0019613

Appellant: Employer

Local Office : 64 / BALTOMETRO
CALL CENTER

January 4, 2001

For the Claimant :

For the Employer : GEORGE HOWARD

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 was employed from October 1, 1997 and the last day he worked was November 1, 2000. At the time of separation, the claimant had been working full time as a maintenance technician at the rate of \$13.27 an hour.

In February, 1998, the claimant received a copy of the employer's "Work Rules." Work Rule #3 indicated that "Theft or attempted theft of the company, customers, or other employees' property," would result in immediate termination.

From time to time, the employer has a need to dispose of pallets, which have no value. The claimant was given the task of calling a particular company for the purposing of arranging to have the pallets disposed of. The claimant did make arrangements with Pallet Repair Company, Inc.

When Pallet Repair Company came to pick up the pallets, there were good pallets mixed in with the other pallets. The "good pallets" did have value. Apparently, there were at least three separation occasions on which Pallet Repair, Inc. picked up pallets.

Upon discovering that there were good pallets in the various shipments, Pallet Repair, Inc. contacted the claimant and offered to pay for those good pallets. The claimant then directed Pallet Repair, Inc. to make its check for the good pallets payable to himself and to mail the payment to the employer's address.

The employer was not aware of this arrangement until what proved to be the third check from Pallet Repair Inc. was mailed to the claimant at the employer's address. Someone else opened the envelope and saw the check made payable to the claimant. This led to an investigation of the matter. Ultimately, the employer confronted the claimant who admitted the above facts and offered to repay the employer. The claimant was discharged.

The third check, which was the check that was intercepted, was obviously not cashed by the claimant. The two previous checks which the claimant received, he did cash and they totaled over \$1,000.00.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 (Supp. 1996) 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).

EVALUATION OF EVIDENCE

In the case of a discharge, the employer has the burden of proving that the discharge was for actions which constitute some degree of misconduct in connection with the work. The employer has presented sufficient evidence to establish the above facts which constitute theft on the part of the claimant. The claimant's actions rise to the level of gross misconduct.

DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002(a)(1)(i) (Supp. 1996). The claimant is disqualified from receiving benefits from the week beginning October 29, 2000 and until the claimant becomes re-employed and earns wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the Claim Specialist is reversed.

M Cooper, 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 410-949-0022 or 1-800-827-4839. 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.

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by January 19, 2001.

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

Date of hearing : December 27, 2000
AB/Specialist ID: RGB24
Seq No: 001
Copies mailed on January 4, 2001 to:
STEWART K. SMITH JR
MADISON WAREHOUSE CORP
LOCAL OFFICE #64
CANTON WAREHOUSE CO