



*William Donald Schaefer, Governor  
Mark L. Wasserman, Secretary*

*Board of Appeals  
1100 North Eutaw Street  
Baltimore, Maryland 21201*

*Telephone: (410) 333-5032*

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

**— DECISION —**

|                                       |   |
|---------------------------------------|---|
| Decision No.:                         | 41-BR-93  |
| Date:                                 | January 13, 1993  |
| Claimant: Curtis O. Battle            | Appeal No.: 9221223   |
|                                       | S. S. No.:  |
| Employer: Mass Transit Administration | L. O. No.: 1  |
|                                       | Appellant: CLAIMANT   |
| Issue:                                | Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. |

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**— 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 February 12, 1993

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**— 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.

The Board adopts the findings of fact of the Hearing Examiner. Based on these same facts, the Board reaches different conclusions of law.

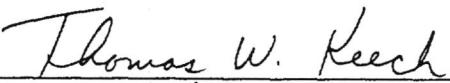
The claimant in this case could not continue employment because he failed to pass the required test to obtain his federal Commercial Driver's License. The claimant was required, at times, as part of his work duties, to drive heavy trucks. At first, he could legally do this without this particular license, but this license then became legally required. His employer could not continue to employ the claimant at his job unless he obtained his license. The claimant failed to obtain this license because he repeatedly failed the test. He studied for the test and took classes to prepare for the test, but he was not able to pass it. Because of this his employer could no longer use him on this job.

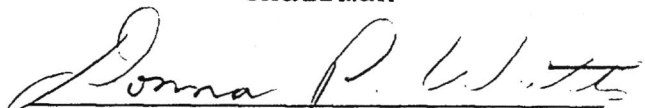
There was no misconduct involved in the claimant failing to pass the test. This is not a case where an employee simply fails to take a required test, or where an employee negligently fails to make reasonable preparation to take a test. The claimant's efforts to prepare himself for the test were reasonable. He failed the test due to simple inability. An inability to perform the requirements of one's job, despite genuine efforts, does not amount to misconduct. The claimant will therefore, be held to have been discharged, but not for any misconduct.

#### DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Mass Transit Administration.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Associate Member

K:D  
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

R. Scott McNeilly, Esquire

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UNEMPLOYMENT INSURANCE - BALTIMORE



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer, Governor*  
*Mark L. Wasserman, Secretary*

*Gary W. Wiedel, Administrator*  
*Louis Wm. Steinwedel, Chief Hearing Examiner*

*Room 501*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

### — DECISION —

Mailed: 11/12/92 <sup>Telephone: (410) 333-5040</sup>

Claimant: Curtis O. Battle Date: \_\_\_\_\_  
Appeal No.: 9221223  
S. S. No.: \_\_\_\_\_  
Employer: Mass Transit Administration L. O. No.: 001  
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.

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### — NOTICE OF RIGHT OF FURTHER APPEAL —

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

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

November 27, 1992

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

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### — APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Charles Humes,  
Supervisor

### FINDINGS OF FACT

The claimant had been employed with the Mass Transit Administration for many years. He was a B Repairman, essentially a mechanic. He was occasionally required to drive dump trucks and other commercial vehicles in connection with his job. A Federal

legislation was passed which required all drivers of certain types of vehicles, including those driven by claimant, to obtain a commercial driver's license by April 1, 1992. The claimant was given a leave of absence beginning March 26, 1992 in order to obtain a license but despite repeated attempts was unable to do so. The leave of absence granted 120 days to obtain a license, until July 19, 1992. When claimant had not obtained a license by that day, he was withheld from service pending termination because he was unable to meet departmental requirements.

#### CONCLUSIONS OF LAW

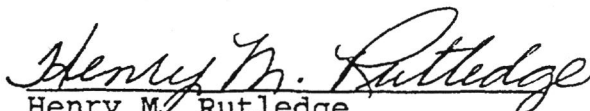
The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1)(ii) provides that an individual shall be disqualified from benefits where he/she is discharged from employment because of a series of violations of employment rules which demonstrate a regular and wanton disregard of his/her obligations to the employer. The preponderance of the credible evidence in this case will support a conclusion that the claimant's actions meet this standard of the Law.

A change in the law made it necessary for the claimant to obtain a certain type of license in order to continue the duties of his job. The claimant was given sufficient time to prepare for and pass the examination but was unable to do so. Under these circumstances, his failure to obtain or maintain one of the prerequisites for his job is either a disregard of his obligations to the employer or a series of violations. In any case, the failure to obtain required license has been held to be gross misconduct.

#### DECISION

The claimant was discharged for gross misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1002. Benefits are denied from the week beginning July 27, 1992 and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount (\$2,230) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

  
Henry M. Rutledge  
Hearing Examiner

Date of Hearing: 11/3/92  
ps/Specialist ID: 01041  
Cassette No: Attached to File  
Copies mailed on 11/12/92 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)