

**- DECISION -**

Claimant:  
ANDRES AGUILAR

Decision No.: 4448-BR-12

Date: December 12, 2012

Appeal No.: 1221772

S.S. No.:

Employer:  
UPS GROUND FREIGHT , INC

L.O. No.: 62

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: January 11, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact, but concludes that these facts, along with the additional findings of fact noted below, warrant different conclusions of law and a reversal of the hearing examiner's decision. The Board makes the following additional findings of fact:

The claimant returned to the work location the next workday, March 26, 2012. He merely stated something had come up at home. The employer initially discharged him for what it stated was job abandonment in violation of its policies. The claimant had no prior warnings or instances of similar absences. He was presented with a copy of the employer's

attendance and notice of absence expectations at the time he was hired. After the claimant filed a grievance and a hearing was held under his union contract, he was reinstated to employment on June 1, 2012. The intervening period was characterized as a suspension.

The Board notes that the hearing examiner incorrectly listed the claimant as present at the hearing. The claimant did not appear and the Board corrects the decision to reflect this.

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)*.

For purposes of determining whether a claimant is qualified for unemployment benefits, as suspension is treated the same as any other permanent separation from employment. Because the claimant did not work, and was not paid, for this period of weeks, he is considered unemployed. Whether he qualifies for benefits depends upon why he did not work for this time.

The threshold issue is whether this suspension was the result of the claimant's voluntary action or the employer's initiation. The Board finds the claimant did not manifest an intent to quit his employment. The claimant returned the next work day. At that time, the employer discharged him. The fact that this was later converted to a suspension does not change the reason for the claimant's period of employment between March 26, 2012 and May 31, 2012. The claimant was unemployed during this period because of an employer-initiated separation. This matter should have been analyzed under the statutes which cover simple misconduct and gross misconduct.

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*.

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, *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). 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).

In his appeal, the claimant explains his version of the events which led to his filing for unemployment benefits. The claimant contends he did not quit, but was reinstated, after a grievance hearing, through his union. His absence was converted to a suspension from March 26, 2012 through May 31, 2012. He also refers to an overpayment. An overpayment was not an issue before the hearing examiner. The claimant must first file an appeal with the Lower Appeals Division on that question.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant did not appear and testify. The Lower Appeals Division hearing was the claimant's opportunity to testify, to cross-examine opposing witnesses and to offer and object to documentary evidence. The necessary elements of due process were observed throughout the hearing. The claimant offers no reason in his appeal for this failure to appear at the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. The Board has modified the facts, based upon the employer witness' testimony, to reflect the occurrence of the suspension and the claimant's reinstatement to employment as of June 1, 2012.

The Board notes that a suspension is treated the same as a discharge for unemployment qualification purposes. The evidence establishes that the claimant was suspended for having abandoned his job. Job abandonment is, generally, indicative of gross misconduct. With no evidence to the contrary, the Board cannot find that the claimant had some emergency or other necessitous reason for abandoning his job, without notice, on March 23, 2012. His suspension was the result of his deliberate or willful disregard for the employer's expectations and requirements. The suspension occurred because of gross misconduct. The claimant was not qualified to receive benefits during this period of unemployment.

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 has 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.

The claimant is disqualified from the receipt of benefits, effective March 25, 2012...

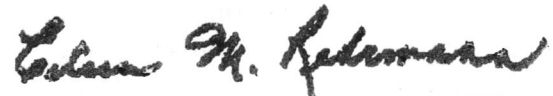
### DECISION

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 March 25, 2012 and until the claimant becomes re-employed, earns at least twenty times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

RD

Copies mailed to:

ANDRES AGUILAR

UPS GROUND FREIGHT INC

UPS GROUND FREIGHT INC>

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ANDRES AGUILAR

SSN #

**Claimant**

vs.

UPS GROUND FREIGHT , INC

**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: 1221772

Appellant: Employer

Local Office : 62 / COLLEGE PARK  
CLAIM CENTER

July 20, 2012

**For the Claimant:** PRESENT, THAIS HALLER, INTERPRETER

**For the Employer:** PRESENT, MICHAEL SCHNABEL

**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, Andres Aguillar, began working for this employer, UPS Ground Freight, Inc. on May 5, 2004. At the time of separation, the claimant was working as a local driver. The claimant last worked for the employer on March 23, 2012, before quitting.

On March 23, 2012, the claimant left the workplace in the middle of his shift. He failed to return to work after that time despite being scheduled to work after that date. The claimant offered no reason to the employer as to why he was abandoning his job.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning...; 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, of his or her own free will, terminated the employment." 275 Md. at 79.

Md. Code Ann., Labor & Emp. Article, Section 8-1001 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.

## 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 claimant had 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.

The claimant was not present at the hearing to meet his burden. Furthermore, the employer offered credible, uncontroverted testimony that the claimant simply walked off of the job during his shift and did not return to finish his shift or for his regularly scheduled shifts over the following days.

The claimant abandoned his job. Thus, neither a finding of good cause nor valid circumstances is warranted in this matter.

## 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 & Emp. Article, Section 8-1001. Benefits are denied for the week beginning March 18, 2012, and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of the Claims Specialist is reversed.

*H Abromson*

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H Abromson, 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**

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 August 06, 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: July 13, 2012  
BLP/Specialist ID: WCP6E  
Seq No: 001  
Copies mailed on July 20, 2012 to:

ANDRES AGUILAR  
UPS GROUND FREIGHT INC  
LOCAL OFFICE #62