

**- DECISION -**

|                                |               |                   |
|--------------------------------|---------------|-------------------|
| Claimant:                      | Decision No.: | 4557-BR-12        |
| ROBERT L BRADLEY               | Date:         | December 12, 2012 |
|                                | Appeal No.:   | 1216994           |
|                                | S.S. No.:     |                   |
| Employer:                      | L.O. No.:     | 61                |
| U.S. DEPARTMENT OF AGRICULTURE | Appellant:    | Claimant          |

Issue: 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).

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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. The Board makes the following additional findings of fact: The claimant's absences on January 26, 2012 and February 6, 2012 were approved.

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)*.

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*.

As the Court of Appeals explained in *Department of Labor, Licensing and Regulation v. Hider, 349 Md. 71, 82, 706 A.2d 1073 (1998)*, "in enacting the unemployment compensation program, the legislature created a graduated, three-tiered system of disqualifications from benefits based on employee misconduct. The severity of the disqualification increases in proportion to the seriousness of the misconduct."

*Dept. of Labor, Licensing & Regulation v. Boardley, 164 Md. 404, 408 fn.1 (2005)*.

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 reiterates much of his testimony from the hearing. He reasserts his contention that his supervisor engaged in harassment and discrimination.

The Board has conducted a thorough review of the evidence of record from the Lower Appeals Division hearing. The Board does not find that the employer has established any deliberate or willful disregard for the employer's interests or expected standards of behavior, with respect to the absence which caused his discharge. The claimant was not repeatedly careless or grossly negligent. The claimant was absent, with timely notice to the employer, on the last day because his son has sustained a nose-bleed. While this may sound minor, the Board is aware that under some circumstances, such an incident may be serious. The claimant was concerned and wanted to remain with his son. The claimant attempted to bring documentation when he returned to work, but his supervisor was not available. The claimant did not know he was expected to turn this paperwork in to someone else. The Board is of the opinion that the employer's expectations, or its expression of those expectations, were, in many ways, confusing. Most importantly, the claimant's last absence was for reasons beyond his control and was not avoidable. This does not constitute gross misconduct or even simple misconduct.

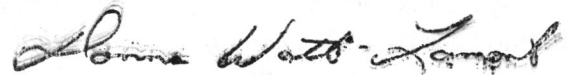
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the employer has not met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The employer has also not met its burden of showing that the claimant's discharge was for misconduct within the meaning of § 8-1003. The decision shall be reversed for the reasons stated herein.

**DECISION**

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment with U.S. DEPARTMENT OF AGRICULTURE.

The hearing examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

TBW

Copies mailed to:

ROBERT L. BRADLEY  
U.S. DEPARTMENT OF AGRICULTURE  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ROBERT L BRADLEY

SSN #

**Claimant**

vs.

U.S. DEPARTMENT OF AGRICULTURE

**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: 1216994

Appellant: Employer

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

June 29, 2012

**For the Claimant:** PRESENT, DAVID HOUGH

**For the Employer:** PRESENT, DR. KAREN JAMES, BRADLY SHRIND

**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, Robert Bradley, worked for the above captioned employer, U.S. Department of Agriculture, from March 27, 2011 until March 23, 2012 as a program support assistant earning \$44,293.00 per year in a full time capacity. The claimant was terminated for attendance issues despite prior warning.

The claimant has worked for the federal government for approximately 15 years and is a retired military veteran. He was working in the National Center for Import and Export for the Department of Agriculture and his normal job duties were to answer phones as well as other administrative responsibilities.

Between his first day and December 31, 2011 the claimant accumulated approximately 20 unscheduled absences, some of which were followed by reprimand by his supervisor, Dr. Karen James-Preston. On

January 5, 2012 the claimant was placed on a leave restriction notice for his poor attendance, which included failing to properly notify the employer as required by department policy. (See Emp. Ex. #2) Under this notice the claimant was required to provide written documentation for any future absences irrespective of their duration. (See Emp. Ex. #2) The leave restriction was to remain in force until the claimant demonstrated significant improvement in his attendance.

On January 26, 2012 the claimant requested leave for a court appearance; the leave was approved in writing and the claimant later supplied the notice for the court date. (See Emp. Ex. #4) However, Dr. James-Preston became frustrated that the claimant asked for the entire day off on January 26 even though the court proceeding was not scheduled until 1:15 PM. (See Emp. Ex. #4)

On February 6, 2012 the claimant requested to leave early to deal with a matter with his credit union account even though the credit union branches had hours on a Saturday in proximity to the claimant's request that would not have required him to miss work. (See Emp. Ex. #6-7)

On March 5, 2012 the claimant called out from work because his 16-year old son had a nosebleed. The claimant did not take him to the doctor because he had recently switched health care providers but he also did not take him to the emergency room either. The claimant later provided two notes for this absence: a fax from the Suitland Health and Wellness center indicating they had no appointments from March 7, and a note from the Greenbelt Medical center indicating that the claimant had been seen. (See Emp. Ex. #8) In subsequent discussion with Dr. James-Presenton, however, the claimant clarified that second note as a "recommendation" for him to miss time to stay home with his son, not an actual visit document. The claimant also offered the bloody tissues from his son's nosebleed for that day to his employer.

After this final incident, the employer decided to terminate the claimant for violating the tenets of the leave restriction notice for his absences on January 26, February 6 and March 5, 2012. (See Emp. Ex. #10)

## **CONCLUSIONS OF LAW**

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.

## **EVALUATION OF EVIDENCE**

The evidence presented shows that the employer discharged the claimant. In a termination case the employer has the burden of proving, by a preponderance of the credible evidence, that the discharge was for some degree of misconduct connected with the work within the meaning of Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has been met.

The employer demonstrated that the claimant had attendance issues for which they warned and restricted his future attendance. The claimant was aware that his job was in jeopardy. However, in spite of his notice of leave restriction, the claimant missed an entire day of work for an afternoon court case on January 26, 2012, and then left work early on February 6 to attend to financial matters even though his credit union was open

on the first Saturday of the month.

Although the claimant testified that his son had a medical issue on March 5, he did not support the absence with the appropriate medical documents as required by the employer's policies and his leave restriction notice.

This type of behavior demonstrates an overall indifference to the employer's interests and was a deliberate and willful disregard of the standards of behavior that the employer had a right to expect.

I hold that the claimant's actions show a regular and wanton disregard of his obligations to the employer and constitute gross misconduct in connection with the work. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Employment Article, Section 8-1002 pursuant to this separation from employment.

### 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). The claimant is disqualified from receiving benefits from the week beginning March 18, 2012, and until the claimant becomes reemployed and earns wages in covered employment that equal at least 25 times the claimant's weekly benefit amount.

The determination of the Claims Examiner is reversed.



P G Randazzo, 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 July 16, 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: June 13, 2012

BLP/Specialist ID: WCP27

Seq No: 002

Copies mailed on June 29, 2012 to:

ROBERT L. BRADLEY  
U.S. DEPARTMENT OF AGRICULTURE  
LOCAL OFFICE #61