

- DECISION -

Claimant:
LATANYA T BAXTER

Decision No.: 4649-BR-12

Date: October 15, 2012

Appeal No.: 1135007

S.S. No.:

Employer:
LABORATORY CORPORATION OF
AMERICA-PAYROLL DEPT

L.O. No.: 65

Appellant: CLAIMANT - REMAND FROM
COURT

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- 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: November 14, 2012

PROCEDURAL HISTORY

The claimant filed a *Petition for Judicial Review* with the Circuit Court for Montgomery County. The Board of Appeals petitioned the Court to remand this administrative appeal to the Board for additional review. The Circuit Court for Montgomery County ordered that the Board's *Motion For Remand* be granted.

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant worked as a full-time phlebotomist from March 24, 2010 until August 23, 2011, earning \$15.50 an hour. The claimant was discharged for unprofessional conduct.

Both parties agree that the claimant was discharged and the weight of the credible evidence shows that the claimant was discharged.

Upon hire, the claimant was placed in an in-house position as a phlebotomist. The claimant was aggressive, not easy to get along with and constantly argued with co-workers. A meeting was held with the claimant, sales, her co-worker and her office manager to iron out the problems. The employer went so far as to add an additional room so that the two phlebotomists had their own rooms. The problems, however, continued and the claimant was transferred to a Patient Service Center (PSC).

When the claimant was transferred, she was warned by a supervisor that the employer had no where else to put her if it didn't work out at the PSC. The claimant's behavior at the PSC did not improve. The supervisor continued to receive complaints from the claimant's co-workers as well as numerous patient complaints. These complaints were discussed with the claimant and her supervisor. The culminating event occurred when the claimant continued to engage in a verbal exchange with a patient's mother rather than walk away from the situation.

In the termination meeting, after the claimant was informed that she was going to be terminated, the claimant got in her supervisor's face and started yelling at her. The claimant was advised to leave the premises before the employer called the police. The claimant left the premises.

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 Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidenced introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appe

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); 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.”

The Board finds the employer to be more credible than the claimant. Sufficient evidence impeaches the claimant’s veracity.

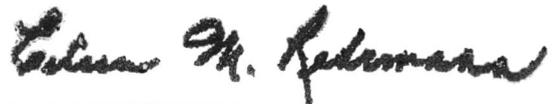
The weight of the credible evidence showed that the claimant continued her unacceptable behavior with co-workers and patients after warnings and counseling. The claimant showed a willful and wanton disregard of an employee’s obligations and showed a gross indifference to the employer’s interests.

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 *Maryland Annotated, Labor & Employment Article, § 8-1002*.

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 August 21, 2011 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.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

LATANYA T. BAXTER
LABORATORY CORPORATION OF
LABORATORY CORPORATION OF
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

LATANYA T BAXTER

SSN #

Claimant

vs.

LABORATORY CORPORATION OF
AMERICA-PAYROLL DEPT

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: 1135007

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

October 27, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, RANDY GRAVES, LOLITA MARTIN, ANGELA BORDELON

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, Latanya T. Baxter, began working for this employer, Laboratory Corporation of America, on or about March 24, 2010. At the time of separation, the claimant was working as a Phlebotomist. The claimant last worked for the employer on or about August 23, 2011 before quitting under the following circumstances:

On August 22, 2011, the claimant was assigned to draw blood at the Wheaton PSC Facility. One of the clients was a child, and the claimant was assigned to draw blood from the child. The child's mother was present. The child was restless. After several attempts, the claimant decided that blood could not be drawn

from the child because of the restlessness.

The mother of the child became upset with the claimant because of the delay. Shouts were exchanged between the mother and the claimant. The mother told the claimant that she was going to “fuck her up”. The claimant responded on several occasions “get out of my face”. The police were called both by the mother and the claimant. No charges were filed.

Management became aware of the aforementioned incident. It instructed the claimant to report for a meeting with management, including the Regional Manager, on August 23, 2011, and the claimant did so. Management recited that claimant’s behavior on August 22, 2011 was investigated. It offered the facts it had, complaining that claimant should have just walked away from the situation rather than engage with the child’s mother. Management had other complaints regarding previous conduct, namely: going out of the work site during working hours to purchase breakfast, frequent arguing with co-employees and leaving discarded or used items on the floor. Termination was contemplated.

Before any decision regarding termination was voiced or otherwise demonstrated by management to claimant, the claimant abruptly arose from her seat and went face to face with the Regional Manager (who was in the process of explaining why the meeting was being held) complaining that the claimant did nothing wrong. The claimant’s voice was raised, frightening and disrespectful. The claimant then indicated that she was not going to listen anymore and began to leave. At that point, employer terminated the claimant.

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 she 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.

An intention to quit one's job can be manifested by actions as well as words. Lawson v. Security Fence Supply Co., 1101-BH-82.

In Roffee v. State of South Carolina Water River Correction Institute, 576-BR-88, the claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged. The Board of Appeals found a quit without good cause or valid circumstances. In Brewington v. Department of Social Services, 1500-BH-82, the Board of Appeals held that a resignation in order to avoid facing charges, which may lead to discharge, was a voluntary quit without good cause and without valid circumstances. In Cofield v. Apex Grounds Management, Inc., 309-BR-91, the claimant voluntarily quit because he thought he would be discharged. The Board of Appeals held that when an employee voluntarily quits in anticipation of discharge for his own misconduct, this is a voluntary quit without good cause or valid circumstances. In Pasko v. Salisbury Warehouse Partnership, 173-BR-87, the employer confronted the claimant with a suspicion of theft when money was missing from the employer's account. The employer's action was reasonable. Rather than attempt to explain, the claimant quit the job. The Board of Appeals held that since the claimant quit to avoid a confrontation with the employer over missing money, and since the employer's actions were reasonable, the claimant voluntarily quit without good cause or valid circumstances.

It appears clear that the claimant, by her actions and words, demonstrated an intent to quit. The claimant objected to the allegations made against her. The claimant would have had the opportunity to defend herself, just like she so vigorously did at the subject hearing.

It is true that claimant could have or even would have been terminated no matter what she said in defense. However, claimant never knew that she would be terminated when she entered that room nor thereafter. It was only when she got up, expressed herself vigorously and said words to the effect that she was not going to listen anymore and was leaving, that employer terminated her.

It is thus determined that the claimant has failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

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 August 21, 2011 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.



G P Adams, 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 November 11, 2011. 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: October 19, 2011
DAH/Specialist ID: RWD3D
Seq No: 002
Copies mailed on October 27, 2011 to:
LATANYA T. BAXTER
LABORATORY CORPORATION OF
LOCAL OFFICE #65