

**- DECISION -**

Claimant:  
MYCHAEL P EDWARDS

Decision No.: 4960-BR-13

Date: January 13, 2014

Appeal No.: 1325918

S.S. No.:

Employer:  
G L S INC

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

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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: February 12, 2014

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**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 decision of the hearing examiner.

The claimant was employed as a part time bus person, earning \$4.50 an hour plus tips. The claimant began working for the employer in May 2013 and his last day of work was May 30, 2013. The claimant had no prior warnings or disciplinary actions prior to his discharge.

The employer's absenteeism policy requires an employee to call out and inform management as early as possible that they will be unable to work a scheduled shift.. It is the employee's responsibility to find a suitable replacement to cover their shift. In extreme cases, such as severe illness, management will assume the burden of replacing the employee for their shift. The claimant knew and understood the policy.

The claimant called out but did not find his replacement. The claimant contacted several people to find shift coverage but was unable to find a replacement. It was Saturday night and a busy time for the business. The owner called and asked the claimant to come into work and they would try to accommodate his needs. When the claimant did not show and there was no replacement at the workplace, the employer offered another employee, who was working the shift, additional compensation to work two jobs that evening. The claimant had contacted this individual to see if he could cover his shift but the claimant did not hear back from him. The employee later texted the claimant to let him know that his shift had been covered. The claimant was then discharged.

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); 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."

There is conflicting testimony as to when the claimant called in. Both parties agree that the claimant did call in before his scheduled shift to inform his employer that he was sick. Subsequently, the employer contacted the claimant to ask him to come in and perform his work with the condition that he could sit and

rest frequently and go home early if he could not find a replacement, However the claimant did not call back to tell his employer that he would not come in and the claimant did not find a replacement.

The credible evidence established that the claimant had a responsibility to return his employer's call to let them know he would not be able to work under any conditions because of his illness. The claimant's action demonstrated a dereliction of duty to his employer.

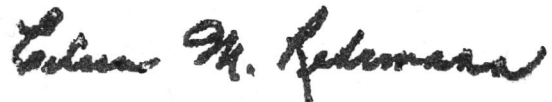
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the employer met its burden of demonstrating that the claimant's actions rose to the level of misconduct within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1003*. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

### DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article Maryland Code Annotated, Title 8, Section 1003. The claimant is disqualified from receiving benefits from the week beginning May 28, 2013 and the nine weeks immediately following.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MYCHAEL P. EDWARDS

G L S INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

MYCHAEL P EDWARDS

SSN #

**Claimant**

vs.

GLS 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: 1325918

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

October 03, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, LEE STUMPF

**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 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

**FINDINGS OF FACT**

The claimant, Mychael P. Edwards, filed a claim for benefits establishing a benefit year effective October 14, 2012. He qualified for a weekly benefit amount of \$174.

The claimant began working for this employer, GLS Inc., on May 2013. At the time of separation, the claimant worked part-time as a bus person. He earned \$4.50 plus tips. The claimant last worked for this employer on May 30, 2013, before being terminated under the following circumstances:

The employer policy states, in pertinent part, that it is the employee's direct responsibility to find a suitable replacement to cover his shift. In extreme circumstances (i.e. cases of severe illness or injury, death in the family, etc) management will assume the burden of replacing the employee from his shift. (Employer Exhibit #1)

On June 1, 2013 the claimant called out sick due to food poisoning. The claimant properly notified a manager that he would be out sick. The claimant made the manager aware that he would try to find coverage for his shift. The claimant's coworker named "Lee" agreed to provide shift coverage for the claimant. The employer was not aware that the claimant texted "Lee" to provide shift coverage. The employer had "Lee" scheduled for training as a server. The employer asked "Lee" to put off training and agreed to pay "Lee" both wages to perform the claimant's job. The claimant was terminated for an alleged failure to find shift coverage.

Prior to this single incident, the claimant never missed a day of work.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of 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." Rogers v. Radio Shack, 271 Md. 126, 132 (1974).

## 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 employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has not been met.

In Sims v. Red Roof Inns, Inc., 655-BH-91, the Board of Appeals held "The misunderstanding between the claimant and the employer was due to a miscommunication. The claimant's actions did not amount to misconduct or gross misconduct."

Similarly, in the case at bar, miscommunication between the employer and the claimant resulted in the claimant's discharge. Had the parties communicated better, the claimant may not have been terminated. Although the employer alleged the claimant did not provide shift coverage, the claimant credibly testified that he made a reasonable effort to do so, despite being ill. The employer policy does excuse employees from finding shift coverage in extreme circumstances of severe illness. This is such a case. The claimant

was under no obligation to find shift coverage due to his circumstances. Accordingly, the employer presented insufficient evidence to support a finding of any degree of misconduct.

I hold that the claimant did not commit a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engage in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises. No unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.

### DECISION

IT IS HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. No disqualification is imposed based upon the claimant's separation from employment with the above-identified employer. The claimant is eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto:ui@dllr.state.md.us) or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is reversed.



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P A Butler, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 October 18, 2013. 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 : September 25,2013  
TH/Specialist ID: WCU2M  
Seq No: 002  
Copies mailed on October 03, 2013 to:

MYCHAEL P. EDWARDS  
G L S INC  
LOCAL OFFICE #63