

 **Maryland**  
Department of Economic &  
Employment Development

*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.:	498-BR-93
	Date:	March 19, 1993
Claimant:	Appeal No.:	9224359
	S. S. No.:	
Employer:	L. O. No.:	2
	Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 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.

April 18, 1993

THE PERIOD FOR FILING AN APPEAL EXPIRES

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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 adopts all the findings of fact of the Hearing Examiner, except for one. The Board will correct the finding of fact as

to the date the employer informed the claimant that she had to sign a Request For Leave Of Absence Form and provide a statement from her physician indicating the extent of her disability and the expected rate of recovery. The correct date is December 18, 1992. However, the Board concludes that these facts warrant a different conclusion of law and reverses the decision of the Hearing Examiner.

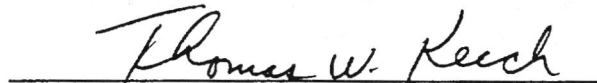
Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and wilfull disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

Upon receiving the employer's letter dated December 18, 1992, (Employer's Exhibit 1) the claimant was obligated to comply with the employer's reasonable request. When the claimant failed to provide the requested information or contact the employer with a valid excuse, her actions rose to the level of gross misconduct as defined in §8-1002 of the Labor and Employment Article.

#### DECISION

The claimant was discharged for gross misconduct, connect with the work, as defined in §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning January 3, 1993 and until she becomes re-employed, earns ten times her weekly benefit amount (\$1310.00) and thereafter becomes unemployed through no fault of her own.

  
Associate Member

  
Chairman

DW:K  
kbm  
COPIES MAILED TO:  
CLAIMANT  
EMPLOYER  
UNEMPLOYMENT INSURANCE - GLEN BURNIE

Donna H. Gardiner, Paralegal



# Maryland

## Department of Economic & Employment Development

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

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

*Room 511*  
*1100 North Eulaw Street*  
*Baltimore, Maryland 21201*

*Telephone: (410) 333-5040*

### — DECISION —

Claimant: Betty L. Ullman

Date: Mailed 1/19/93

Appeal No.: 9224359

S. S. No.:

Employer: Anne Arundel County Public Schools L. O. No.: 02  
c/o Gibbens Co., Inc. 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 TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE 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 PETITION FOR REVIEW EXPIRES ON

February 3, 1993

NOTE: 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:

FOR THE EMPLOYER:

NOT PRESENT

REPRESENTED BY:

Stephen Flavin, Supervisor  
Classified Services; Donna  
H. Gardiner for Gibbens Co.

### FINDINGS OF FACT

The claimant was employed by the Anne Arundel County Public School System from September 5, 1989 until her last day of work on June 3, 1992. The claimant was a school bus aid working

full-time at a salary of \$8.16 per hour.

The claimant was injured on-the-job on June 3, 1992. The claimant sought medical assistance and was deemed by her physician to be unable to work.

On September 24, 1992, the employer's physician, Dr. Joel Meshulam, stated that there was no reason why the claimant could not return to her previous employment (employer's Exhibit #3). On September 15, 1992, a notice of termination of temporary disability statement was mailed to the claimant informing her that according to Dr. Meshulam, she could return to work. The claimant was told that her temporary disability compensation check included benefits through September 22, 1992 and that she should return to work.

When the claimant did not report back to work, the employer sent her a letter dated October 16, 1992 stating that the claimant had been terminated because she had missed three consecutive work days without notifying a supervisor as to the reason for her absence (employer's Exhibit #2).

The claimant filed a Workers' Compensation claim which was granted. Accordingly, the employer rescinded its separation from employment dated October 16, 1992. The claimant received a full sixty day salary through November 13, 1992. The employer notified the claimant that as of November 13, 1992, the claimant needed to sign a request for leave of absence form and provide a statement from her physician indicating the extent of her disability and the expected rate of recovery. The leave of absence request form and the physician's statement must be submitted to the employer by Monday, January 4, 1993.

Stephen J. Flavin, supervisor of classified services, testified credibly that the claimant had not returned the leave of absence form and the accompanying physician's statement by Monday, January 4, 1993. Accordingly, on that date, the claimant was considered to have voluntarily resigned resulting in her separation of employment from the school system.

The claimant did receive disability payments and salary through November 13, 1992.

#### CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual is disqualified for benefits when her unemployment is due to leaving work voluntarily. This

section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "AS we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of her own free will, terminated the employment."

The Maryland Code, Labor and Employment Article, Title 8, Section 1003(a)(b) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

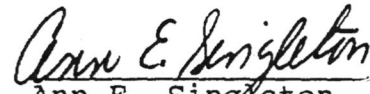
In this case, the claimant did not voluntarily quit her position with the Anne Arundel County Public School System. The claimant was injured on-the-job on June 3, 1992 and has not worked since then because of the injury. The employer terminated the claimant in October and then rescinded that termination in December after the claimant successfully pursued a Workers' Compensation claim. The claimant was terminated by the employer on January 4, 1993 for failing to fill out a written leave of absence request form and failing to submit a physician's statement as requested by the employer in a letter dated December 18, 1992. The claimant received that letter but did not provide the requested information by January 4, 1993. The credible evidence presented at the appeal hearing supports a conclusion that the claimant was discharged but not for misconduct, connected with the work pursuant to Title 8-1003 of the Maryland Unemployment Insurance Law. The claimant's failure to return the requested documents does not constitute misconduct. Moreover, the claimant's absence due to illness does not constitute misconduct within the meaning and intent of Title 8, Section 1003. Accordingly, benefits are allowed.

#### DECISION

It is held that the claimant did not voluntarily quit her employment with the Anne Arundel County Public School System. It is further held that the claimant was discharged, but not for misconduct, connected with the work pursuant to Title 8, Section 1003. No disqualification is imposed based on the claimant's

separation from her employment with Anne Arundel County Public School System. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed, benefits are allowed.

  
Ann E. Singleton  
HEARING EXAMINER

DATE OF HEARING: 1/11/93  
Specialist ID: 02417  
gr/CASSETTE IN FILE

COPIES MAILED ON 1/19/93 TO:

Claimant  
Employer  
Unemployment Insurance - Glen Burnie (NABS)

Donna Henry Gardiner, Paralegal