

**- DECISION -**

Claimant:	Decision No.:	5098-BR-10
NOELLE V JONES	Date:	January 14, 2011
	Appeal No.:	1003741
	S.S. No.:	
Employer:	L.O. No.:	64
JOHNS HOPKINS BAYVIEW MED CTR	Appellant:	Employer

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 14, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion of law.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

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."

Lying or making a false representation to an employer can constitute gross misconduct. See, e.g., *Shivery v. Slagle's Construction Company, Inc.*, 438-SE-88; *Wilson v. Dept. of Agriculture*, 680-BR-90; *Robinson v. Realty Investment Company, Inc.*, 853-BR-90; *Conaway v. Oxford Realty Services Corporation*, 51-BR-91; *Herche v. Rock-Tenn Company*, 329-BR-94.

The degree of misconduct (simple or gross) depends on the materiality of the information falsified on a job application. *Hill v. First National Bank*, 1958-BR-92. Falsification or misleading statements on a job application can constitute gross misconduct. *Faudree v. C.M. Anderson's Crane Service, Inc.*, 819-BR-83 (the claimant's deliberately misleading statement to the employer concerning his experience and ability to perform the dangerous job of crane operator constitutes gross misconduct). A falsification of a criminal record is always material. *Johnson v. Minneapolis Postal Data Center*, 83-BH-89 (a falsification of a criminal record is more serious than misrepresenting one's age and is always material).

The Board finds that the claimant's intentional misrepresentation on the job application was material because it related to the minimum qualifications for the position. The claimant, after knowing that she did not pass the G.E.D. examination, intentionally took no steps to correct her misrepresentation. The claimant further exacerbated her fabrications by stating that she received her high school diploma in 1987. The Board finds no mitigating circumstances which would support a finding less than gross 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 met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The hearing examiner's simple misconduct decision shall be reversed for the reasons stated herein.

### DECISION

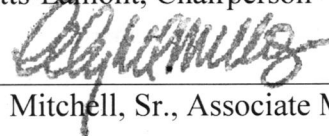
It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning December 6, 2009 and until the claimant 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.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

NOELLE V. JONES

JOHNS HOPKINS BAYVIEW MED CTR

JEFF SCHER

JENNIFER COE HEARING REP.

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

NOELLE V JONES

SSN #

**Claimant**

vs.

JOHNS HOPKINS BAYVIEW MED CTR

**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: 1003741

Appellant: Employer

Local Office : 64 / BALTOMETRO  
CALL CENTER

March 15, 2010

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , LINDA SZIMANSKI, SUNDAY JONES, JEFF SCHER

**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 began working for this employer on September 8, 2009, and her last day worked was December 9, 2009. At the time of her discharge, the claimant worked full-time as a Housekeeping Aide, earning an hourly salary of \$11.89. The employer terminated the claimant from her position for falsifying her employment applications.

The claimant applied for the position of Housekeeping Aide, a position which requires neither a High School diploma, nor a G.E.D. At the time she applied for this position, the claimant was awaiting receipt of her scores from her G.E.D. examination. Feeling confident about passing the test, the claimant indicated she had her G.E.D. (ER EX #1). The employer hired the claimant, who later learned she failed the G.E.D.

examination. Because the position of Housekeeping Aide required neither a High School diploma, nor a G.E.D., the claimant did not update the employer's Human Resources Department she failed the test.

The employer internally posted an opening for a Patient Registrar, requiring the applicants to possess either a High School diploma, or a G.E.D. (ER EX #2). The claimant submitted an Internal Bid Form, seeking the job; to which she attached a copy of her resume, which indicated she received her High School Diploma in 1987. (ER EX #3). During the claimant's interview for the Patient Registrar job, the employer noted the inconsistencies between the two applications and asked the claimant if she possessed either a High School diploma, or a G.E.D. The claimant answered in the negative and the employer discharged the claimant for falsifying her employment applications.

### 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 employer had the burden to show, by a preponderance of the credible evidence, the claimant's termination was for conduct which rose to the level of misconduct or gross misconduct, pursuant to the Maryland Unemployment Insurance Law. (See Hartman v. Polystyrene Products Company, Inc., 164-BH-83). In the case at bar, the employer met this burden.

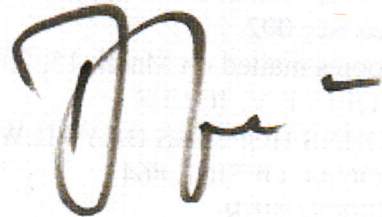
In Hill v. First National Bank, 1958-BR-92, the Board of Appeals held "While falsification of an employment application is misconduct, the degree of misconduct (simple or gross) depends on the materiality of the information falsified." The Board of Appeals found significant falsification, warranting a finding of gross misconduct, where the claimant "deliberately misled...the employer concerning his experience and ability to perform the dangerous job of crane operator" (Faudree v. C.M. Anderson's Crane Service, Inc., 819-BR-83); where the claimant misled the employer concerning conviction of a crime (Johnson v. Minneapolis Postal Data Center, 83-BH-89); and where the claimant failed to note a prior discharge for embezzlement (Hill v. First National Bank, 1958-BR-92). The claimant's assertion she possessed either a High School diploma, or a G.E.D., while false, does not rise to the level of the aforementioned precedent decisions.

Accordingly, I hold the employer met its burden in this case and the claimant's discharge was for falsifying her employment application, constituting simple misconduct, warranting the imposition of a weekly penalty.

**DECISION**

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. Benefits are denied for the week beginning December 6, 2009, and for the four weeks immediately following. The claimant will then be 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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D J Doherty, III, 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 March 30, 2010. 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: March 02, 2010  
DW/Specialist ID: USB23  
Seq No: 002  
Copies mailed on March 15, 2010 to:  
NOELLE V. JONES  
JOHNS HOPKINS BAYVIEW MED CTR  
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