

- DECISION -

Claimant:
RALPH L LEATHERWOOD

Decision No.: 5186-BR-12

Date: December 17, 2012

Appeal No.: 1227919

S.S. No.:

Employer:
PHILADELPHIA TRUCK LINES INC

L.O. No.: 65

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.

- 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 16, 2013

REVIEW OF THE RECORD

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

The claimant worked as a truck driver from October 12, 2004 until June 17, 2012 as a truck driver. The claimant was discharged for failing to provide medical documentation for four weeks of absence.

The employer had a verbal policy of requiring a doctor's note after three days of absence from the job. The claimant had cloudy vision in his eye and learned after consultation with a specialist that the claimant had a cataract and it needed to be removed for his vision to improve. The claimant took off from work for four weeks. The employer contacted the claimant to let the claimant know that he needed to provide a doctor's note as to when his illness started and when he would be able to return to work. The claimant did not respond. When the medical documentation was not forthcoming, the claimant was terminated.

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."

The Courts of Appeals stated that a standard for misconduct as follows: "... a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or course of wrongful conduct committed by an employee, within the scope of his employment relationship or on the employer's premises." *Rogers v. Radio Shack*, 271 Md. 126, 314 A. 2d 113 (1974).

The claimant was derelict in his duty to provide his employer medical documentation for his illness. The employer only maintained a verbal policy on sick leave. However, even if the claimant misunderstood the specific documentation requirement from his employer, the claimant did not exert due diligence in keeping his employer informed of his medical status.

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 of the hearing examiner shall be modified for the reasons stated herein.


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 June 10, 2012 and the four weeks immediately following.

The Hearing Examiner's decision is modified.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

RALPH L. LEATHERWOOD
PHILADELPHIA TRUCK LINES INC
JAMES D. GREEN
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

RALPH L LEATHERWOOD

SSN #

Claimant

vs.

PHILADELPHIA TRUCK LINES 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: 1227919

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

September 20, 2012

For the Claimant: PRESENT, DIANE LEATHERWOOD, JAMES D. GREEN, ESQ.

For the Employer: PRESENT, ROBERT C. CROCETTI

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, Ralph Leatherwood, began working for this employer, Philadelphia Truck Lines Inc., on or about October 12, 2004. At the time of separation, the claimant was working as a truck driver. The claimant last worked for the employer on June 17, 2012, before being terminated for failing to provide medical documentation in order to substantiate the fact that he missed four straight weeks of work.

Specifically, the claimant was absent from May 21, 2012 through June 15, 2012 – the first week of which was scheduled vacation, the remainder was for ostensible medical reasons. As a result, on June 4, 2012, the employer asked the claimant to provide medical documentation to substantiate the claimant's medical

condition. As a result of a good faith miscommunication between the parties, however, the claimant did not understand that he needed to provide the documentation by any specific deadline. As a result, after the claimant failed to provide that documentation by early July, he was terminated.

The claimant suffered from cataract issues, which became sufficiently bad during the claimant's vacation in early June, 2012. As a result, the claimant scheduled an examination in June, 2012, which confirmed that the claimant needed cataract surgery. That surgery was eventually scheduled for July 5, 2012. He was released to work effective July 7, 2012.

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, 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.

Because the claimant reasonably and in good faith complied with all known deadlines of the employer's vis-à-vis his need to submit medical documentation, 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 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.



D Sandhaus, 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 October 5, 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: September 06, 2012

DAH/Specialist ID: USB23

Seq No: 001

Copies mailed on September 20, 2012 to:

RALPH L. LEATHERWOOD

PHILADELPHIA TRUCK LINES INC

LOCAL OFFICE #65

JAMES D. GREEN