

**- DECISION -**

Claimant:  
TAKRIA A ROWLEY

Decision No.: 529-BR-14

Date: April 30, 2014

Appeal No.: 1334174

S.S. No.:

Employer:  
CHIMES INC  
ATT GARY LANE COMTROLLER

L.O. No.: 65

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: May 30, 2014

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**REVIEW OF THE RECORD**

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

The claimant worked for this employer for two years and was aware of the requirement for recertification in "CPR" and First Aid. The claimant's certification expired on September 19, 2013. Classes for recertification were available in August; however, the claimant made no attempt to sign up for the refresher courses. The claimant attempted to sign up for classes in September but the classes were filled. The claimant was placed on a thirty day

suspension and directed to secure the recertification. The claimant made no further effort to obtain her recertification and was discharged on October 21, 2013.

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 Board finds the testimony of the employer to be more credible than that of the claimant. The claimant impaired her credibility when she changed her testimony and subsequently revised her statement from the statement that she did not receive any notification that her certifications were about to expire to a statement admitting that she read the memoranda that her certification was about to expire and she needed to be recertified.

The Board finds that the claimant did not exert due diligence in obtaining her recertification in CPR and First Aid. The claimant's failure to maintain mandatory CPR and First Aid certifications, having been made aware at the time of hire, shows a willful disregard of the employer's interest and a breach of obligations expected by the employer. The claimant engaged in gross misconduct for which she was terminated.

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 *Maryland Annotated, Labor & Employment Article, § 8-1002*. The decision shall be modified for the reasons stated herein and in the hearing examiner's decision.

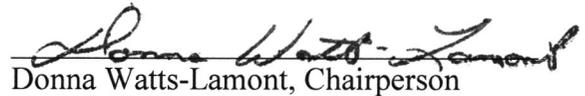
### DECISION

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 September 15, 2013 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

VD

Copies mailed to:

TAKRIA A. ROWLEY

CHIMES INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TAKRIA A ROWLEY

SSN #

**Claimant**

Vs.

CHIMES 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: 1334174

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

December 27, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, DEBORAH DOWNS-LYNCH

**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, Takria Rowley, was employed by this employer, Chimes Inc., from September 21, 2010 to September 20, 2013. At the time of her separation from employment, the claimant worked full-time as a Residential Program Technician at a wage of \$10.37 an hour.

The claimant was discharged from her employment due to the following:

On or about August 2, 2013 the claimant received and read memoranda from her employer advising her that her CPR certification was due to expire on September 19, 2013 and that her first aid certification was due to expire on September 24, 2013 (employer exhibit number one) and that the claimant need to be recertified in CPR and first aid prior to the respective expiration dates noted above. The claimant had been made aware at the time of hire that she needed to have and maintain current CPR and first aid certifications in order to

continue in her employment. The claimant signed up for an "internal" first aid course -- i.e., one given free of charge by the employer -- to be given in late September 2013 sometime after September 3, 2013, but was advised that this class was full. The claimant made no other attempts to register for any other internal first aid classes (they are given periodically) or any internal CPR classes. Successful completion of CPR and first aid courses is a prerequisite for recertification.

The employer placed the claimant on a 30 day suspension without pay commencing September 21, 2013 (the claimant's last physical day worked was September 20, 2013). The purpose of this suspension was to enable the claimant to obtain her CPR and first aid recertification by taking classes given by another course provider (i.e., other than the employer) at her own expense. The claimant did not take advantage of this opportunity and the suspension without pay became a discharge on or about October 21, 2013.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the employer discharged or suspended the claimant 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)].

Md. Code Ann., Labor & Emp. Article, Section 8-1002(a)(1), provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as (i) conduct that is a deliberate and willful disregard of standards of behavior an employer has the right to expect and shows gross indifference to the employer's interests; or (ii) repeated violations of employment rules proving a regular and wanton disregard of the employee's obligations.

### **EVALUATION OF THE 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 been met but only as to simple misconduct, not gross misconduct. The facts set forth in the findings of fact, above, are supported by a preponderance of the credible evidence.

This hearing examiner finds the testimony of the employer witness, Deborah Downs Lynch to be more credible than that of the claimant. The claimant impaired the credibility of the testimony by initially testifying that the employer memoranda of August 2, 2013 (employer exhibit number one) reminding the claimant that her certifications in CPR and first aid were about to expire were not "delivered" to her. It subsequently developed that they were delivered to the Chimes residence at which the claimant worked and that she had in fact read the memoranda. The claimant then revised her testimony and contended that the memoranda had not been delivered her since they had not been placed in her actual "inbox" at this residence. This is an artificial and specious distinction and get impairs the credibility of the claimant's testimony.

The claimant's ongoing failure since no later than early August 2013 to take any internal certification course in either first aid or CPR was substandard conduct. The claimant knew that she needed to successfully complete these courses as a prerequisite to recertification. The question is whether this substandard conduct is mere simple misconduct or rises to the level gross misconduct. In order for it to constitute gross misconduct, a preponderance of the credible evidence must establish that the claimant's ongoing failure to take the courses was due to a willful or wanton state of mind. As stated in Department of Economic & Empl. Dev. v. Jones, 79 Md. App. 531, 535-536, 558 A.2d 739 (1989), "There are no hard and fast rules to determine what constitutes deliberate and willful misconduct." In Employment Security Board v. LeCates, 218 Md. 202, 145 A.2d 840 (1958), the Court of Appeals noted that such a determination "will vary with each particular case." The Court went on to state: "Here we 'are not looking simply for substandard conduct \* \* \* but for a willful or wanton state of mind accompanying the engaging in substandard conduct. \* \* \* [T]he wrongness of the conduct must be judged in the particular employment context. \* \* \* [C]ertain conduct will be so flagrant that indulging in it will undoubtedly be misconduct whether or not a specific rule prohibiting it has been expressly formulated and posted or otherwise announced to the employees.'" 218 Md. at 208, 145 A.2d. at 844, quoting Sanders, Disqualification for Unemployment Insurance, 8 V and. L.Rev. 307, 334 (1955). The Court concluded that where the claimant's conduct evinced an utter disregard of an employee's duties and obligations to the employer and was calculated to disrupt the discipline and order requisite to the proper management of a company, a finding of gross misconduct is supported.

This hearing examiner does not believe that the preponderance of the credible evidence in the instant case establishes that the claimant's ongoing failure to attend the certification courses was due to "a willful or wanton state of mind". The preponderance of the credible evidence in the instant case establishes merely that the claimant was negligent in not following up diligently on her recertification. This negligence does not constitute "a willful or wanton state of mind". The claimant's suspension and discharge were due to simple misconduct, not gross misconduct.

### DECISION

IT IS HELD THAT the employer suspended the claimant without pay, and subsequently discharged the claimant 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 September 15, 2013 and for 14 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.



A. Scheinberg, 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 January 13, 2014. 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: December 12, 2013  
AEH/Specialist ID: USB3D  
Seq No: 002  
Copies mailed on December 27, 2013 to:

TAKRIA A. ROWLEY  
CHIMES INC  
LOCAL OFFICE #65