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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor
EUGENE A. CONTI, JR., Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

JASPAL S. KOCHHAR

Decision No.: 00866-BR-97

Date: March 31, 1997

Appeal No.: 9624627

S.S. No.:

Employer:

HOLY CROSS HOSPITAL OF S S INC
ACCOUNTING DEPT

L.O. No.: 43

Appellant: Employer

Issue: 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).

- 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: April 30, 1997

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but reaches a different conclusion of law.



Maryland Code, Labor and Employment Article Title 8, Section 1002.1(a) provides aggravated misconduct means "behavior committed with actual malice and deliberate disregard for the property, safety, or life of others that:

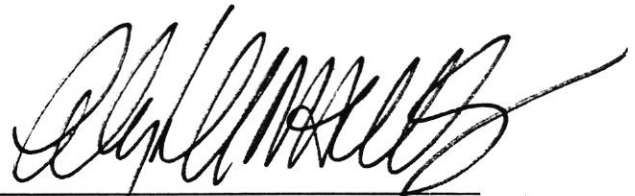
- (i) Affects the employer, fellow employees, sub-contractors, invitees of the employer, members of the public or the ultimate consumer of the employer's product or services; and
- (ii) Consists of either physical assault or property loss or damage so serious that the penalties of misconduct or gross misconduct are not sufficient.

The claimant, an educated, licensed pharmacist, took the employer's property (a controlled dangerous substance) without authorization and with the intent to permanently deprive him of it. The claimant took this property with actual malice. The property loss in this case is so serious, due to the nature of the property stolen, that the penalties of misconduct or gross misconduct are not sufficient. The product that was stolen was a controlled dangerous substance which the claimant was entrusted as a licensed pharmacist to dispense only for a few valid purposes. The claimant's intentional theft of a controlled dangerous substance, given his position of trust and responsibility, rises to the level of aggravated misconduct within the meaning of Section 8-1002.1 of the law.

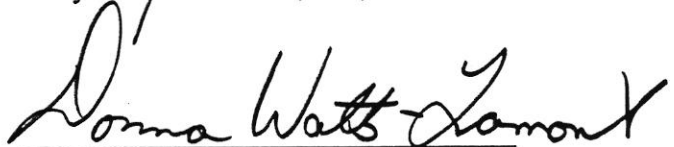
DECISION

The claimant was discharged for aggravated misconduct, connected with the work, within the meaning of §8-1002.1 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning October 27, 1996 and until the claimant earns thirty times his weekly benefit amount in covered employment and thereafter becomes re-employed.

The decision of the Hearing Examiner is affirmed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

kjk

Copies mailed to:

JASPAL S. KOCHHAR

HOLY CROSS HOSPITAL OF S S INC

JUDITH R. CATTERON, ESQUIRE

DONNA KLAUZA

Local Office - #43

UNEMPLOYMENT INSURANCE APPEALS DECISION

JASPAL S. KOCHHAR

Before the:

SSN #

Claimant

vs.

HOLY CROSS HOSPITAL OF S S INC
ACCOUNTING DEPT

Employer/Agency

Maryland Department of Labor,
Licensing and Regulation
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9624627
Appellant: Employer
Local Office: 43 / Wheaton

January 10, 1997

For the Claimant: PRESENT, JUDITH R. CATTERTON, ESQUIRE

For the Employer: PRESENT, DONNA KLAUZA, JOHN E. KELLY, MILLARD GOMEZ

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 was employed from September 15, 1986 through October 29, 1996 as a staff pharmacist in the employer's hospital at the ending rate of pay of \$29.23 per hour. The claimant was discharged from this employment, effective October 29, 1996 for removing the employer's property from their premises without permission, and because his license to practice pharmacy in the State of Maryland was suspended.

On January 27, 1996, the employer had a meeting, at which time the claimant was asked about prescriptions he had been filling for a patient. The claimant had filled several telephone prescriptions from an alleged doctor. The doctor had been questioned and denied he had issued these prescriptions. Since the claimant was the only one filling these prescriptions, he was the one subsequently questioned. At the time of questioning, the claimant denied any inappropriate conduct and stated,

"Prove it." Subsequently, a later investigation was conducted by the Montgomery County Police Department through surveillance cameras installed. On October 23, 1996, the director of pharmacy viewed one of these surveillance tapes. That surveillance tape showed the claimant entering the employer's medication safe, at which time the claimant put a particular type of medication in his coat pocket and left the safe. It was part of the claimant's job duty to enter the safe and remove medication for one of three work purposes. Those work purposes would be to fill a prescription, to fill a dispensing machine, or to fill some bins. From watching the surveillance tape, the director of pharmacy concluded that claimant had removed approximately fifty tablets of a particular type of medication costing approximately \$.74 a piece. The following day, on October 24, 1996, the director of pharmacy checked the prescriptions, the bins, and the dispensing machine and discovered that claimant had not used the approximate fifty tablets of the particular type of medication he had taken from the safe the prior day for any of these legitimate work purposes. On October 26, 1996, the claimant was arrested and charged by the Montgomery County Police Department with theft from the employer's hospital, possession with intent to distribute, and possession of controlled dangerous substances. Based on the video tape and the claimant's arrest, the employer discharged the claimant, effective October 29, 1996.

On November 8, 1996, the director of the pharmacy went to the Police Department to inventory medication the police had seized from the claimant's private residence pursuant to a search warrant on October 25, 1996. That inventory disclosed that the claimant had been in possession of approximately \$64,000.00 worth of medications of the type issued through nursing homes and hospitals. The only specific identifying evidence found was that some of the medication was in a bag which was a bag from the employer's hospital, and there was a prescription bottle issued by the hospital in the name of a person other than the claimant.

On December 2, 1996 the State Board of Pharmacy suspended claimant's license to practice pharmacy.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1002.1(a) (Supp. 1995) provides aggravated misconduct means "behavior committed with actual malice and deliberate disregard for the property, safety, or life of others" that:

(i) Affects the employer, fellow employees, sub-contractors, invitees of the employer, members of the public or the ultimate consumer of the employer's product or services; and

(ii) Consists of either physical assault or property loss or damage so serious that the penalties of misconduct or gross misconduct are not sufficient.

Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994) provides that an individual shall be disqualified from receiving benefits where he or she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards that an employer has a right to expect and shows a gross indifference to the employer's interests. Employment Sec. Bd. v.

LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training. et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

EVALUATION OF EVIDENCE

The employer has the burden to show, by a preponderance of the evidence, that the claimant was discharged for a disqualifying reason within the meaning of the Law. One of the two alleged reasons for discharge was the suspension of claimant's license. Since this suspension of claimant's license did not occur until some thirty-four days after claimant was discharged, it must be found that the claimant, in fact, had a valid license at the time of discharge. Subsequently, at the time the claimant was discharged, his licensing status would not have amounted to any form of misconduct within the meaning of the Law.

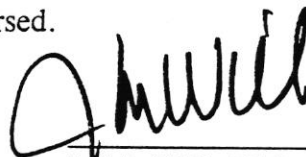
The employer presented a prima facie case that claimant stole fifty tablets of a particular type of medication from the employer at a cost of \$.74 each. Since the claimant failed to present any rebuttal evidence to this prima facie case, the employer has met their burden, by a preponderance of evidence, in showing that the claimant improperly removed this property from the employer's premises without permission. The employer was not aware of the other \$64,000.00 worth of products until ten days after the claimant's discharge. Since the employer was unaware of this other product at the time of discharge, it could not have been part of the basis for claimant's discharge, and therefore, would not amount to any form of misconduct within the meaning of the Law.

At the time of discharge, the employer was aware that the claimant has stolen approximately \$37.00 worth of product. That action constitutes actual malice and a deliberate disregard for the employer's property. That property loss fails to rise to such a level that aggravated misconduct can be found. However, the claimant's actions demonstrate a deliberate and willful disregard of standards that the employer has a right to expect which constitutes gross misconduct within the meaning of the Law.

DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994). A disqualification is imposed for the week beginning October 27, 1996 and extending until the claimant becomes re-employed and has earned wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the claims examiner is reversed.



J. M. Will, ESQ
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by January 27, 1997.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: December 31, 1996

MP/Specialist ID: 43724

Seq. No.: 002

Copies mailed on January 10, 1997 to:

JASPAL S. KOCHHAR
JUDTH R CATTERTON, ESQUIRE
HOLY CROSS HOSPITAL OF S S INC
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DONNA KLAUZA