

- DECISION -

Claimant:	Decision No.:	874-BR-13
CHRISTOPHER J SCHOLZ	Date:	March 20, 2013
	Appeal No.:	1234609
	S.S. No.:	
Employer:	L.O. No.:	63
HARFORD CO PUB SCHOOLS	Appellant:	Claimant

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 19, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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)*. 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).

In the claimant's appeal, his representative reiterates much of the testimony from the hearing. The claimant's representative contends the hearing examiner, "applied the wrong statutory analysis to Claimant's appeal...Further, procrastination does not constitute gross misconduct although, admittedly, it may well constitute 'misconduct'..." The Board agrees.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter.

The Board has thoroughly reviewed the record from the hearing and concurs with the contentions made by the claimant's representative. The employer had the option to retain the claimant while he completed the paperwork necessary to obtain his certification. The employer communicated its need for additional information to the claimant through an email to which the claimant no longer had access because of an action taken by the employer. The claimant had provided an alternative email, but this was neither captured nor used by the employer to communicate with the claimant. The claimant was unaware of any need for additional action on his part because of this.

Additionally, the claimant knew that there was a "grace period" after the expiration of his certificate. The employer could have chosen to retain the claimant while the final paperwork for his certification was completed. The claimant did procrastinate in obtaining the credits he needed and in submitting the paperwork. However, as noted by the claimant's representative, this procrastination was not gross misconduct.

The claimant was not acting with deliberate disregard for the employer's interests or expectations. He was careless or negligent in this matter, but this was neither repeated carelessness nor gross negligence.

This was a dereliction of a duty owed by the claimant to the employer. As such, it was simple misconduct warranting only a benefit penalty.

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 has met its burden of demonstrating that the claimant's actions rose to the level of simple misconduct within the meaning of §8-1003. The decision shall be reversed for the reasons stated herein.

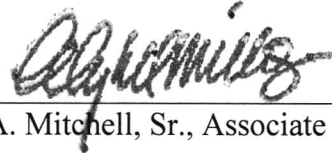
DECISION

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 fourteen weeks immediately following.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD/mw

Copies mailed to:

CHRISTOPHER J. SCHOLZ
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DONNA D. HENRY
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CHRISTOPHER J SCHOLZ

SSN #

Claimant

vs.

HARFORD CO PUB SCHOOLS

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: 1234609

Appellant: Employer

Local Office : 63 / CUMBERLAND
CLAIM CENTER

November 13, 2012

For the Claimant: PRESENT

For the Employer: PRESENT, DONNA D. HENRY, BARBARA MATTHEWS, DEBBIE CANON

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, Christopher J. Scholz, began working for this employer, Harford Co Pub Schools, on December 3, 1984. At the time of separation, the claimant was working full-time as a teacher. The claimant last worked for the employer on June 13, 2012, before being terminated for failing to complete the requirements to maintain his teaching certification.

Per his contract signed August 7, 2001, the claimant was required to hold a professional certificate. (Employer Ex. 6) Per the terms of the contract, the claimant's contract automatically terminated if the claimant ceased to hold said professional certificate. (Employer Ex. 6)

The claimant received a certification from the Maryland State Department of Education ("MDSE") valid from June 1, 2007 to June 30, 2012. By memorandum sent to him November 2, 2007, the claimant was informed of such certification. (Employer Ex. 2) The memorandum also informed the claimant that by June 30, 2012, he needed to complete all necessary requirements to maintain his certification. (Employer Ex. 2) The memorandum further presented the steps the claimant could take to fulfill those requirements. The memorandum ended by providing the claimant the contact of Barbara Matthews, Human Resource Coordinator, if he had additional questions. (Employer Ex. 2) By memorandum dated March 13, 2008, the claimant was reminded about his professional certification requirements. (Employer Ex. 2) The document also stated that failure to complete the requirements would result in his ineligibility for a professional certificate and might jeopardize his employment status with Harford County Public Schools. (Employer Ex. 2)

On May 2, 2011, the claimant emailed Ms. Matthews and inquired about which continuing education classes he needed to take and the deadline by which to take them. (Employer Ex. 1) Ms. Matthews responded by referring the claimant to the memorandum dated November 2, 2007, which explained those requirements. (Employer Ex. 1) With the exception of this email, from November 2007 until June 2012, the claimant made no efforts to fulfill his professional certificate requirements due to procrastination. On June 22, 2012, the claimant contacted the Human Resource Compliance Office and spoke with Christine Lambert, an assistant, about what he needed to do to meet his requirements. The claimant was again reminded of the six credit requirement. He was directed to provide documentation of his course work or other evidence that could meet the requirements. The claimant was also informed that if he did not meet his requirements for his professional certificate by June 30, 2012, he would be issued a conditional certificate that would be effective July 1, 2012 to June 30, 2014, and he would have six months to complete the requirements. (Employer Ex. 1) He was also informed that he would lose tenure. (Employer Ex. 1) COMAR Section 12A.12.01.08 states a local school system shall request a Conditional Teacher Certificate only if a local school system is unable to fill a position with a qualified person who holds a professional certificate. (Employer Ex. 7) It further states that an applicant hired by a local school system that holds the requisite degree but does not meet the requirements for a professional certificate, may be issued the Conditional Teacher Degree Certificate at the request of the local superintendent of schools. (Employer Ex. 7) As of June 30, 2012, the claimant failed to provide the necessary paperwork to fulfill his certification requirements. On Sunday, July 1, 2012, the claimant faxed over documentation to be considered for his certification. (Employer Ex. 5; Agency Ex. 2) The documentation was considered the next working day, July 2, 2012. For all the educational equivalents the claimant submitted, the claimant failed to get all the necessary signatures as required. (Agency Ex. 2) Ms. Matthews sent an email to the claimant's work account as well as through the interoffice mail to his assigned school that he would be given until July 13, 2012, to complete his requirements. Unbeknownst to Ms. Matthews, the claimant had been removed from the classroom and had been blocked from using his work email due to an investigation. The claimant did provide an email on his fax transmission for a response to be given that the fax had been received. (Employer Ex. 5) The email address had not been captured by the compliance office. As of July 13, 2012, no updated and completed documentation had been presented by claimant to the compliance office. The claimant was deemed to not have met his certification requirements. His file was referred to management for further action. The claimant was not issued a conditional certification because the employer was able to fill the position with one that had a professional certification. Under the terms of his contract, the claimant was then terminated.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 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 conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that 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).

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).

Md. Code Ann., Labor & Emp. Article, Section 8-1002 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 conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that 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 Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

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.

The facts establish the claimant was terminated because he failed to complete the requirements to maintain his teaching certification. The claimant was placed on notice in 2007, 2008, and again in 2011 of the requirements for his certification. Using the claimant's words, he "procrastinated" and took essentially no action over a five year period towards fulfilling the requirements until the last week of the deadline. While the claimant was given incomplete information about the conditional certificate on June 23, 2012, the claimant was not aggrieved. The claimant provided documentation to be considered towards his certification on July 1, 2012, one day after the expiration of his certification. Unbeknownst to him, the employer had extended his deadline. The employer still considered the documentation. The claimant failed to take the necessary steps to secure the necessary signatures for each document submitted. The claimant's

failure to complete his certification requirements due to his own inaction constitutes gross misconduct.

I hold that the claimant's actions showed a deliberate and willful disregard of the standards the employer had a right to expect, showed a gross indifference to the employer's interests and therefore constituted gross misconduct in connection with the work. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1002 pursuant to this separation from this employment.

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. Article, Section 8-1002(a)(1)(i). The claimant is disqualified from receiving benefits from the week beginning June 10, 2012, and until the claimant becomes reemployed and earns wages in covered employment that equal at least 25 times the claimant's weekly benefit amount.

The determination of the Claim Specialist is reversed.



W E Greer, 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 November 28, 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: October 26, 2012
DW/Specialist ID: WCU2G
Seq No: 002
Copies mailed on November 13, 2012 to:
CHRISTOPHER J. SCHOLZ
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