

 **Maryland**  
Department of Economic &  
Employment Development

*Parris N. Glendening*  
Governor

*Board of Appeals*  
1100 North Eutaw Street, Room 515  
Baltimore, Maryland 21201

*Telephone (410) 767-2781*  
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**- D E C I S I O N -**

Claimant:  
ROSE M. BRYANT

Decision No.: 00967-BH-95

Date: April 28, 1995

Appeal No.: 9417605

S.S. No.:

Employer:  
JOHNS HOPKINS BAYVIEW MED CTR  
ASC BLDG-HR DEPT

L.O. No.: 01

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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**- N O T I C E O F R I G H T O F A P P E A L T O C O U R T -**

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 28, 1995

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**- A P P E A R A N C E S -**

FOR THE CLAIMANT:  
Rose Bryant, Claimant

FOR THE EMPLOYER:  
Lawrence Simpson  
Jeff Berdis  
Candy Stridiron

## EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The Board finds the testimony of the employer to be more credible than the testimony of the claimant.

## FINDINGS OF FACT

The claimant was a full-time service worker from May 11, 1980 through July 20, 1994. She was discharged for repeated violations of the employer's attendance policy, after counseling and in the face of warning.

It is undisputed that the claimant suffers from a thyroid condition that can be controlled by medication. The claimant testified that when she took her medicine, she had no attendance problems. The claimant had between \$40 and \$50 deducted from her hi-weekly paycheck in order to be covered by her employers medical insurance plan. This plan included coverage for her thyroid medication.

In September, 1993, claimant voluntarily stopped the payments for her medical insurance. The claimant's hi-weekly paychecks were being garnished for two personal loans which were called, including a loan which she had co-signed as a guarantor for a friend. The claimant stated that she could no longer afford her medical insurance because of the garnishments.

On December 8, 1993, the claimant was given an employee disciplinary warning which indicated that she had been absent on August 12, August 23, August 27, December 2, and December 3. At this time, the claimant informed the employer that she was absent due to a thyroid condition. This was the first time that the employer was aware of the claimant's chronic illness. It was discovered however, that the claimant could control (and in the past, had controlled) this condition by medication. The employer expected the claimant to take her medication and to report to work on time as scheduled. The claimant was warned that further absences due to an illness which she could control and had controlled would be unexcused and may lead to her termination from employment.

On March 2, 1994, the claimant was given a second written employee disciplinary warning which indicated that she had missed several days in January and February due to her thyroid condition. It is undisputed that the claimant had not been taking her medicine.

On April 14 and 15, the claimant was absent again for her thyroid condition. The claimant was given a third warning and suspended for one day. She was given this a final warning which stated that any

further absences due to a condition which the claimant could control through medication (as she previously had done) would lead to termination.

On June 17 and July 15, 1994, the claimant was again absent and as a result was recommended for termination because she was again absent due to her thyroid condition. She was still refusing to purchase and take her medication to control this condition. Medical insurance was still available to the claimant on July 18, 1994, the claimant was discharged after telling the employer she refused to take her medicine to control her thyroid condition, the condition which caused her repeated absences from work.

Subsequently the claimant with her union grieved her termination. The employer agreed to re-instate the claimant if she agreed to take her medical medicine to control her problem which caused her repeated absences from work. The claimant would not and did not commit to this agreement. The claimant's union did not pursue further action on the claimant's behalf and her termination remained in effect.

#### CONCLUSIONS OF LAW

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 claimant kept her thyroid condition under control during her entire tenure of employment until September, 1993. The claimant, because of personal reasons, chose not to take the medicine which controlled her condition. The Board finds that the claimant used this controllable thyroid condition as an unjustified excuse for repeated absences from work. Medical insurance was available to the claimant through the employer, even after she terminated her policy for personal reasons. The employer offered her reinstatement if she would take the required medication to control her medical problem. This offer was rejected by the claimant.

Insufficient evidence was presented to show that it was impossible for the claimant to remain on her medication.

The Board finds that the claimant's repeated failure to report to work for a medical condition, which she previously controlled by prescription medicine through medical insurance offered by her employer and which she recently refused to purchase and take, causing repeated absenteeism from work rises to the level of gross misconduct, connected with the work as a wanton disregard of the standard of behavior the employer has the right to expect for causing repeated, unnecessary absences from work.

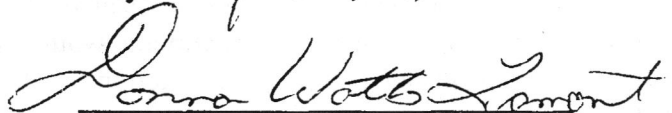
DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning July 17, 1994 and until she becomes reemployed, earns at least twenty times her weekly benefit amount (\$3480) and thereafter becomes unemployed through no fault of her own.

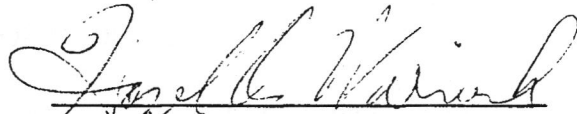
The decision of the Hearing Examiner is affirmed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lament, Associate Member



Hazel A. Warnick, Chairperson

kjk

Date of hearing: March 22, 1995

Copies mailed to:

ROSE M. BRYANT  
JOHNS HOPKINS BAYVIEW MED CTR  
Local Office - #01

## UNEMPLOYMENT INSURANCE APPEALS DECISION

ROSE M. BRYANT

Before the:

SSN # \_\_\_\_\_

**Claimant**

vs.

JOHNS HOPKINS BAYVIEW MED CTR  
ASC BLDG-HR DEPT

**Employer/Agency**

**Maryland Department of Economic and  
Employment Development  
Appeals Division**  
1100 North Eutaw Street  
Room 511  
Baltimore, MD 21201  
(410) 333-5040

Appeal Number: 9417605  
Appellant: Employer  
Local Office: 01 / Baltimore

October 142, 1994

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, LAWRENCE J. SIMPSON

**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 1003 (misconduct connected with the work).

### FINDINGS OF FACT

The claimant worked for the employer from May 11, 1980 through July 20, 1994 as a full time service worker and was paid \$7.54 an hour.

The claimant has admittedly suffered from a thyroid disorder for the past seven years and up to September, 1993 had been taking medicine to control her thyroid problem. Claimant was working for the employer since May, 1980 and had no problem with her attendance at the work site while keeping her thyroid condition under control for the past seven years up to September, 1993, the insurance of the employer and at no cost to herself. The claimant had a small amount deducted from her paycheck to pay for her medical insurance which included drugs for controlling her thyroid condition.

However, in September, 1993, the claimant stopped payment of monies for her insurance due to the fact that she had co-signed a loan for a friend and this loan was being called. Therefore, the claimant felt that she needed more money in her paycheck to pay for this loan and terminated her insurance with the employer. However, her thyroid condition continued and the claimant therefore had no money to buy medicine for her condition and as a consequence her thyroid condition worsened. On December 8, 1993, the claimant was given an employee disciplinary record warning #1 which indicated that she had been out sick on August 12, August 23, August 27 and December 2 and December 3, 1993 due to her thyroid condition. The claimant was told that she had the duty to report to work and that her sickness was directly attributable to the fact that she would not buy the medication to control her thyroid problem since she had dropped the insurance. The claimant was warned that the continual absenteeism due to a condition which she could control could lead to her termination.

On March 2, 1994, the claimant was again given a written employee disciplinary warning which indicated that she again had missed a total of two or three days in January and February due to her thyroid condition and that any similar occurrences of sickness due to her thyroid problem would result in her termination. Finally, on April 18, the claimant was given her third warning since she had missed April 14 and April 15 for sickness due to her thyroid condition and was given a day suspension, effective April 21, 1994. Again, the claimant was warned that any further absence due to a condition which she could control would lead to her termination.

On July 15, 1994, the claimant was recommended for termination due to the fact that she was again out sick April 21, June 17 and July 15, 1994 due entirely to her thyroid condition. On July 18, 1994, the claimant was discharged for continual refusal to take medication to control her thyroid condition.

### CONCLUSIONS OF LAW

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).

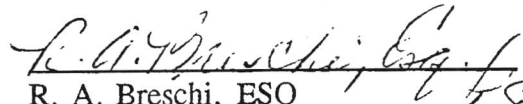
In the instant case, the employer has the burden to prove gross misconduct on the part of the claimant and in this case, the employer has met his burden of proof. The claimant had insurance for her thyroid medication which would enable her to remain in the job but cancelled her insurance in order to pay a debt which she was responsible for as a co-signer of a loan. The claimant was warned repeatedly for about nine months regarding her absenteeism due to sickness which she could control, but the claimant refused to buy medication for approximately eight months to control her thyroid problem and therefore missed an inordinate amount of work due to her sickness. Therefore, it is

determined that the claimant's actions demonstrate a deliberate and willful disregard of standards that the employer has a right to expect and shows a gross indifference to the employer's interest.

### 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 July 17, 1994 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.

  
R. A. Breschi, 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 Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **October 31, 1994**.

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

Date of hearing: October 7, 1994  
PS/Specialist ID: 01038  
Seq. No.: 001  
Copies mailed on October 14, 1994 to:

ROSE M. BRYANT  
JOHNS HOPKINS BAYVIEW MED CTR  
LOCAL OFFICE #01