

**- DECISION -**

Claimant:  
DRUSILLA A BANKS

Decision No.: 996-BR-01

Date: May 21, 2001

Appeal No.: 0104442

S.S. No.:

Employer:  
STAFFMAX CORPORATION INC

L.O. No.: 64

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: June 20, 2001

---

**REVIEW ON THE RECORD**

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

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 was discharged due to a pattern of absenteeism, without excuse and in the face of warnings. This meets the definition of gross misconduct, within the meaning of the statute. **Watkins v. Employment Security Administration**, 266 Md. 223, 292 A.2d 653 (1972). Employees who miss a lot of time, even for excused reasons, have a heightened duty not to miss additional time for unexcused reasons and to conform to the employer's notice requirements. **Daley v. Vaccaro's Inc.**, 1432-BR-93. Further, the Board has held that even though a claimant's last absence was with good cause, a finding of gross misconduct is supported where the claimant was discharged due to a long record of absenteeism without valid excuse or notice, which persisted in the face of warnings. **Hamel v. Coldwater Seafood Corporation**, 1227-BR-93.

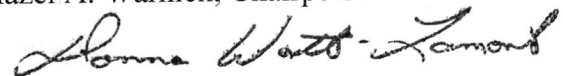
The fact that the employer here is a temporary employment agency and that the absences involved different assignments, does not render the claimant's attendance record irrelevant. The Hearing Examiner appears to have only considered the claimant's absence from the last assignment. However, she was discharged based on her entire employment record with Staffmax Corporation. That record, taken as a whole supports the conclusion that the claimant was discharged for gross misconduct.

### 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. She is disqualified from receiving benefits from the week beginning January 28, 2001 and until she becomes re-employed, earns at least twenty times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Hazel A. Warnick, Chairperson



Donna Watts-Lamont, Associate Member

Copies mailed to:

DRUSILLA A. BANKS  
STAFFMAX CORPORATION INC  
LOCAL OFFICE #64  
STAFFMAX CORPORATION INC  
DONNA KLAUZA  
Michael Taylor, Agency Representative

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

DRUSILLA A BANKS

SSN #

**Claimant**

vs.

STAFFMAX CORPORATION 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: 0104442

Appellant: Employer

Local Office : 64 / BALTOMETRO  
CALL CENTER

April 05, 2001

**For the Claimant : PRESENT**

**For the Employer : PRESENT , DONNA KLAUZA, DORIAN GOLDER**

**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 was employed as a mailroom clerk, by Staffmax Corporation from January 19, 2000 through January 24, 2001, earning wages in the amount of \$6.50 per hour. The claimant was employed on a full-time basis, working an average of 40 hours per week. The claimant completed her last assignment at Distribution Postal. The claimant was offered a new assignment at Case Mason, which was scheduled to begin on January 29, 2001.

On January 29, 2001, the claimant called and left a message that she would not be into work that day. On January 30 and January 31, 2001, no work was available to the claimant. On February 2, 2001, the employer telephoned the claimant to indicate that she could start work at Case Mason on February 2, 2001.

The claimant accepted this position, although she had previously worked for Case Mason and had fainted because of the noxious fumes.

On February 2, 2001, the claimant called her employer prior to the start of the assignment and indicated that she was not feeling well, she had a headache and she would not be in to work that day. As a result of this second phone call, the claimant was discharged for excessive absenteeism.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Section 8-1003 (Supp. 1996) 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, 314 A.2d 113 (1974).

### **EVALUATION OF EVIDENCE**

In a discharge case, the employer has the burden of showing simple, gross or aggravated misconduct, by a preponderance of the evidence. In the instant case, the employer has failed to sustain this burden of proof.

The credible evidence presented indicated that the claimant completed her last assignment at Distribution Postal. She also agreed to begin a new assignment at Case Mason, which was scheduled to begin on January 29, 2001. The claimant did not work that day. On February 2, 2001, the claimant called her employer to indicate that she could not go into work because she had a headache. In light of the fact that the claimant had previous problems at this place of employment, her decision not to work that day was reasonable. One unexcused absence does not constitute excessive absenteeism. Under the circumstances, insufficient evidence has been presented by the employer to indicate that the claimant's conduct constituted misconduct and/or gross misconduct within the meaning of Section 8-1003 of the Maryland Unemployment Insurance Law.

### **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 (Supp. 1996). No disqualification is imposed based upon the claimant's separation from employment with Staffmax Corporation. The claimant may contact the local office concerning the other eligibility requirements of the law.

The determination of the Claim Specialist is affirmed.

---

A K Thompson, 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 410-949-0022 or 1-800-827-4839. 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.**

### **Notice of Right to Petition for Review**

Any party may request a review 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 April 20, 2001. 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

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

Date of hearing: March 26, 2001  
CH/Specialist ID: RBA1H  
Seq No: 001  
Copies mailed on April 05, 2001 to:

DRUSILLA A. BANKS  
STAFFMAX CORPORATION INC  
LOCAL OFFICE #64  
DONNA KLAUZA  
STAFFMAX CORPORATION INC