-DECISION-

Claimant:
EMIKO F AKUYA

Employer:
CITY PERFORMANCE LOGISTICS LLC

Decision No.: 2254-BR-11

Date: May 02, 2011

Appeal No.: 1032671

S.S. No.:

L.O. No.: 61

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- 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 01, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of facts and conclusions of law. The hearing examiner's decision is reversed.

The claimant worked as an operations manager for the employer. Many times the claimant worked during his vacation and from home. The claimant had remote access through his personal computer to the office computer system.

The claimant was responsible for billing, invoicing and payroll. He was responsible for many of the day to day operations of the employer's business.

The claimant went on a scheduled vacation on from July 1, 2010 through July 10, 2010. While he was on vacation he was continuing to remotely perform his job duties.

Prior to the claimant's leaving for vacation, Mr. Davidson, the owner of the company[1], spoke with the claimant about hiring a "friend of his, Scott" from New York, to perform many of the same duties as the claimant.

The claimant was never told his job was in jeopardy. However, because the claimant did much of the accounting for the business, he was aware that the funds were limited with respect to hiring a new person to perform the same tasks as the claimant. Mr. Davidson discussed the lack of funds to hire Scott with the claimant. "Scott" was hired by the employer and began work while the claimant was on vacation.

On July 7, 2010 the claimant received a phone call from a co-worker that he was terminated from employment and that Scott had replaced him. The co-worker, Elaine Custed[2] called the claimant to say that Mr. Davidson told her to call him and tell him he was terminated. She was doing all of his work. He was removed from payroll and his access to the computer was terminated.

To confirm the co-worker's information, the claimant tried to access his computer system remotely – his access was denied. The claimant also attempted to access his voicemail, but it had also been terminated. The claimant tried to access the computer system on two separate days.[3]

In August, 2009, a similar situation occurred while the claimant was on vacation. The claimant was informed by Cynthia, the accounting manager that claimant trained, claimant that Mr. Davidson terminated him. The claimant was removed from accessing the computer system and his voicemail access was terminated. The claimant was discharged. He did not receive any paychecks. After a brief heated conversation with Mr. Davidson, the claimant determined he was discharged. About two months later, after the claimant and Mr. Davidson spoke on several occasions, the claimant was rehired.

They determined that there was a miscommunication between the two of them.

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[1] Mr. Davidson appeared on behalf of the employer at the Lower Appeals' hearing.
[2] Ms. Custed was originally hired as the claimant's peer. She was hired to take over the claimant's duties and he would then be laterally transferred to a different position.
[3] The only person who was able to remove the claimant from the access of the system is Mr. Davidson.

In July, 2010 the same incident occurred with the claimant being told that he was terminated. Because the same situation happened the year before, the claimant did not contact the employer. The employer did not contact the claimant either to find out why he did not return from his vacation.

On July 8, 2010 Ms. Custed was in a payroll meeting with Mr. Davidson and the payroll company. The payroll company was confirming the paychecks and when the claimant's name was mentioned, Mr. Davidson told the payroll company that the claimant was terminated. The claimant's final check was processed internally through the company's operations account, not the payroll processing company.

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(H)(1).* The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E).*

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged. For the following reasons, the Board reverses the hearing examiner's decision on this issue.

The burden of proof in this case is allocated according to whether the claimant voluntarily quit or whether the employer discharged the claimant. 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.*

When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances based upon a preponderance of the credible evidence in the record. *Hargrove v. City of Baltimore, 2033-BH-83; Chisholm v. Johns Hopkins Hospital, 66-BR-89.* Purely personal reasons, no matter how compelling, cannot constitute good cause as a matter of law. *Bd. Of Educ. Of Montgomery County v. Paynter, 303 Md. 22 (1985).* An objective standard is used to determine if the average employee would have left work in that situation; in addition, a determination is made as to whether a particular employee left in good faith, and an element of good faith is whether the claimant has exhausted all reasonable alternatives before leaving work. *Board of Educ. v. Paynter, 303 Md. 22 (1985); also see*

Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984). The "necessitous or compelling" requirement relating to a cause for leaving work voluntarily does not apply to "good cause". *Board of Educ. v. Paynter, 303 Md. 22 (1985).* A resignation in lieu of discharge is a discharge under *§§ 8-1002, 8-1002.1,* and *8-1003. Miller v. William T. Burnette and Company, Inc., 442-BR-82.*

The intent to discharge or the intent to voluntarily quit can be manifested by words or actions. "Due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity. It expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally and of his or her own free will, terminated the employment. *Allen v. Core Target Youth Program, 275 Md. 69 (1975).* A claimant's intent or state of mind is a factual issue for the Board of Appeals to resolve. *Dept. of Econ. & Empl. Dev. v. Taylor, 108 Md. 250(1996), aff'd sub. nom., 344 Md. 687 (1997).* An intent to quit one's job can be manifested by actions as well as words. *Lawson v. Security Fence Supply Company, 1101-BH-82.* A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp., 973-BR-88; Brewington v. Dept. of Social Services, 1500-BH-82; Roffe v. South Carolina Wateroe River Correction Institute, 576-BR-88* (where a claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged is without good cause or valid circumstances); *also see Cofield v. Apex Grounds Management, Inc., 309-BR-91.* When a claimant receives a medical leave of absence but is still believes she is unable to return upon the expiration of that leave and expresses that she will not return to work for an undefinable period, the claimant is held to have voluntarily quit. *See Sortino v. Western Auto Supply, 896-BR-83.*

The intent to discharge can be manifested by actions as well as words.

The issue is whether the reasonable person in the position of the claimant believed in good faith that he was discharged. *See Dei Svaldi v. Martin Taubenfeld, D.D.S., P.A., 1074-BR-88* (the claimant was discharged after a telephone conversation during which she stated her anger at the employer and the employer stated to her, "If that's the way you feel, then you might as well not come in anymore." The claimant's reply of "Fine" does not make it a quit). *Compare, Lawson v. Security Fence Supply Company, 1101-BH-82.* A quit in lieu of discharge is a discharge for unemployment insurance purposes. *Tressler v. Anchor Motor Freight, 105-BR-83.*

The claimant had every reasonable indication that he was discharged from his employment. He was removed from the computer access. He was terminated from the payroll system. His phone messaging system was turned off. A new employee was doing the claimant's job. The claimant was discharged.

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 parties, duly noticed of the date, time and place of the hearing, were afforded a full and fair opportunity to present their case before the hearing examiner.

Notwithstanding the Board's discretion to take new evidence, *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)(2)*, "the presentation of evidence must come to an end at some point". *Maryland State Police v. Zeigler, 330 Md. 540, 556 (1993).*

The appellant in the instant case had clear notice of the obligation to present a case before the hearing examiner. *DLLR v. Woodie, 128 Md. App. 398, 411 (1999).* The hearing notice provided,

> This is the last step at which either the claimant or the employer has the absolute right to present evidence. The decision will be made on the evidence presented. The decision will affect the claimant's claim for benefits, and it may affect the employer's contribution tax rate or reimbursement account.

In addition, the notice stated, in bold print, that additional "important information" could be found on the reverse side of the notice.

Because the appellant was on notice that the only absolute opportunity to present evidence was before the DLLR Hearing Examiner, the appellant had no legitimate justification for the failure to present the evidence in the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 401 (1999).* There are no cognizable defects in the record. Instead, the only end served by the Board remanding this case or having an additional hearing before the Board would be to allow the appellant a second opportunity to present evidence: evidence it was free to present at the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 408 (1999).* In the instant case, the Board finds that the parties were afforded their due process rights of notice and an opportunity to be heard.

The claimant was discharged because he allegedly took an unauthorized vacation. However, at the time the claimant took off from work, he honestly believed that he was on an authorized vacation leave.

He had accumulated vacation leave and his belief that his vacation was authorized was reasonable. The misunderstanding between the claimant and the employer was due to a miscommunication. The claimant's actions did not amount to misconduct or gross misconduct. *Sims v. Red Roof Inns, Inc., 655-BH-91.*

The claimant, who had a conflict with her supervisor, returned from her vacation and saw the locks changed, her desk cleared, her commissions not deposited, and heard from a coworker that she would be fired.

The claimant correctly concluded that she had been discharged. *Adams v. Fairfax Mortgage Corporation, 119-BH-88*

Where the claimant was told that a new person was replacing her in her supervisory position and that the claimant would "have other things to do", she was discharged from her supervisory position. The claimant lacked the requisite "intent" to have voluntarily quit her supervisory position. Accordingly, the claimant was discharged, but not for gross misconduct or misconduct connected with the work. *Mettle v. Pikesville Nursing-Conva House of Baltimore County, Inc., 853-BR-01.*

Where the employer's disciplinary action was taken in bad faith, just as an employee has a basic duty of loyalty toward her employer, an employer has a basic duty to treat an employee in good faith. Where this duty is violated in regard to disciplinary procedures, good cause is established. *Woerner v. White Mach Mall, Inc. 2159-BR-92.*

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 hearing examiner bases his credibility determination on what he perceives as conflicting statements. The hearing examiner's credibility determinations are not demeanor-based.

Because the hearing examiner's credibility determinations were not demeanor-based, the Board does not owe the hearing examiner "special deference" as to his findings in this regard. *See Dept. of Health and Mental Hygiene v. Shrieves, 100 Md. App. 283, 299 (1994).* The Court of Appeals distinguishes between: (1) testimonial inferences, "credibility determinations based on demeanor," and (2) derivative inferences, "inferences drawn from the evidence itself." *Shrieves, 100 Md. App. at 299* (citations omitted). The Court explained:

> Weight is given the administrative law judge's determinations of credibility for the obvious reason that he or she "sees the witnesses and hears them testify, while the Board and the reviewing court look only at the cold records."....But it should be noted that the administrative law judge's opportunity to observe the witnesses' demeanor does not, by itself, require deference with regard to his or her derivative inferences. Observation makes weighty only the observers testimonial inferences. *Shrieves, 100 Md. App. at 299-300.*

The hearing examiner derived his credibility determinations in this regard from what he perceived as conflicting evidence in the record:

> Claimant abandoned his job when he failed to return to work on July 11, 2010, or confirm with employer that he had been terminated. Claimant based his decision on assumption instead of facts.
>
> Abandoning one's job under the circumstances of this case does not constitute good cause or valid circumstances.

The Board does not adopt the hearing examiner's credibility determinations regarding the employer's witnesses.

The hearing examiner failed to provide in her decision a majority of the material facts that were presented at the hearing. Mr. Davidson replied to the hearing examiner's questions with vague, speculative, unsubstantiated responses. When pressed further, Mr. Davidson just said "he could not remember". Whereas, the claimant supplied credible testimony and a credible witness, who provided the hearing examiner with credible, reliable information about the events that transpired that would cause the claimant to believe he was terminated. Therefore, the Board finds that the claimant was terminated. The Board further finds that none of the claimant' actions constitute misconduct.

Further, the claimant encountered the exact scenario the year before when he went on vacation. He did not communicate with the employer and the employer did not communicate with the claimant to determine why he had not returned from his vacation. If the employer had not terminated the claimant (as he did the prior year), why did he not communicate directly with the claimant? Or, perhaps it was merely Mr. Davidson's annual ritual of anxiety over the claimant's scheduled vacation.

All the actions of the employer – the computer access removal, the terminating of the claimant's voicemail access, the removal of the claimant from payroll – lead to one conclusion: the claimant was discharged, but not for misconduct.

The Board finds based on a preponderance of the credible evidence that the employer has not met its burden of demonstrating that the claimant's actions rose to the level of 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, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment with CITY PERFORMANCE LOGISTICS LLC.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

VD/mr
Copies mailed to:
EMIKO F. AKUYA
CITY PERFORMANCE LOGISTICS LLC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

EMIKO F AKUYA

SSN #

Claimant

vs.

CITY PERFORMANCE LOGISTICS LLC

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: 1032671
Appellant: Employer
Local Office : 61 / COLLEGE PARK CLAIM CENTER

October 29, 2010

For the Claimant: PRESENT, ELAINE CUSTEAD

For the Employer: PRESENT, MICHAEL DAVIDSON

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 began working for this employer on or about September 27, 2007. At the time of separation, the claimant was working full time as the operations manager. The claimant last worked for the employer on or about July 1, 2010, before quitting under the following circumstances:

Claimant was on vacation the week of July 1, 2010 through July 10, 2010. During his vacation, on or about July 7, 2010, a co – worker called claimant at home and told him she thought he had been fired. Claimant checked and found that he had been locked out of the employer's computer system, taken off payroll and his voice mail had been closed

A similar episode occurred during Claimant's vacation in August 2009. The accounting manager called claimant at home and told claimant he had been locked out of the computer system, taken off of payroll and his voice mail had been closed. Claimant met with employer in August who confirmed that claimant had been terminated.

Claimant did not call employer in July to confirm termination. Instead, claimant assumed that the outcome of the incident in July 2010 would be the same as the August 2009 incident. Claimant did not return to work or have any further contact with employer other than to pick up his paycheck. Claimant had no prior warning that his job was in jeopardy.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning…; it expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." 275 Md. at 79.

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual shall be disqualified for benefits where unemployment is due to leaving work voluntarily without good cause arising from or connected with the conditions of employment or actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

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 claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit his position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has not been met.

Claimant abandoned his job when he failed to return to work on July 11, 2010, or confirm with employer that he had been terminated. Claimant based his decision on assumption instead of the facts. Abandoning one's job under the circumstances of this case does not constitute good cause or valid circumstances.

It is thus determined that the claimant has failed to demonstrate the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

DECISION

IT IS FURTHER HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning June 27, 2010, and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of the Claims Specialist is reversed.

B. Woodland-Hargrove

B H Woodland-Hargrove, 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 15, 2010. 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 12, 2010
BLP/Specialist ID: RWD2A
Seq No: 001
Copies mailed on October 29, 2010 to:

EMIKO F. AKUYA
CITY PERFORMANCE LOGISTICS LLC
LOCAL OFFICE #61