

- DECISION -

Claimant:
DEBORAH L MATHEWS

Decision No.: 819-BR-12

Date: February 24, 2012

Appeal No.: 1030367

S.S. No.:

Employer:
MEDELL VENTURES INC

L.O. No.: 65

Appellant: EMPLOYER - REMAND FROM
COURT

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: March 26, 2012

REVIEW OF THE RECORD

After a review of the record, the Board rejects the hearing examiner's findings of fact and makes the following findings of fact:

The claimant was employed as a school bus driver from April 23, 2007 through June 15, 2010. In addition to her regular duties, the claimant had often driven the bus, or other vehicles, for field trips and other outings as extra work for income.

In November 2009, the claimant and her employer had a disagreement. Following that, the employer advised the claimant that she would no longer be assigned any work in addition to her regular bus-driver duties. From that point, the relationship between the parties deteriorated, culminating in the employer not speaking to the claimant and not responding to requests for information or for a meeting to discuss their differences.

The employer made no additional offers of any work for the claimant. When the school year ended, the claimant cleaned and returned her bus as she had in the past several years. The employer did not contact the claimant as to her intentions regarding continuing work at that time.

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 her appeal, the claimant reiterates her testimony that she did not quit her position with this employer. The Board agrees. The evidence demonstrated that the claimant was discharged at the end of the regular school term when the employer did not, as was customary, offer her additional work during the summer. The claimant had no plans to leave this employment, but when there was no further employment, the claimant was discharged. The employer's actions effectively laid the claimant off work. A lay-off, due to a lack of work, or no offer of work, is a non-disqualifying discharge.

The employer did not present any evidence which would tend to show that the claimant committed some act of omission which was in deliberate or willful disregard for the employer's expected standards of behavior. The evidence, thus, will not support a finding of gross misconduct. The employer did not present evidence which demonstrated that the claimant was repeatedly careless or grossly negligent. Therefore, the evidence will not support a finding that the claimant was discharged for misconduct.

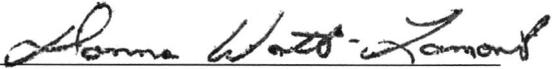
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the employer has not met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The employer has also not met its burden of showing that the claimant's discharge was for 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 MEDELL VENTURES, INC.

The Hearing Examiner's decision is reversed.


Donna Watts-Lamont, Chairperson


Eileen M. Rehrmann, Associate Member

RD

Copies mailed to:

DEBORAH L. MATHEWS
MEDELL VENTURES INC
DANIEL D. ROSENDALE ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DEBORAH L MATHEWS

SSN

Claimant

vs.

MEDELL VENTURES 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: 1030367

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

September 27, 2010

For the Claimant: PRESENT

For the Employer: DANIEL ROSENDALE, ESQ., KENNETH LAWRENCE MEDELL

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 worked for this employer April 23, 2007 through June 15, 2010. At the time she voluntarily quit, she was working as a School Bus Driver.

The claimant quit her employment because of the hostile behavior exhibited by her employer towards her and because she had not been asked, as she had previously been asked by her employer, if she was returning for the next year and if she wanted to work during the summer.

In November, 2009, the claimant and the employer got into a disagreement and the employer told the

claimant that she would not be getting to drive any field trips associated with her bus or any additional Commercial Driving License (hereinafter "CDL") runs in other, non-school bus, vehicles. In the past, the claimant had earned additional money during the school year from driving field trips in the bus and driving other runs in the vans or sedans.

From that point forward, the employer no longer spoke with the claimant. The claimant tried to speak to her employer face-to-face but got no response. So, she then tried to call the employer about things having to do with her job but the employer would answer shortly and then hang up. Not knowing what else to do, she then began, and continued, to send the employer text messages about issues associated with her job duties.

When the school year ended, the claimant cleaned her bus and returned it to her employer. At that time, she did not receive the typical telephone call from her employer asking her about her intentions with reference to the next school year. After the last school bus run, the claimant and the employer had no further contact.

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.

When the reason for leaving is due to the conditions of employment, the standard for determining whether valid circumstances exist is set out in Section 8-1001(c)(1)(i). Under that standard, valid circumstances exist where the reason for leaving was "a substantial cause" connected with the conditions of employment. The "necessitous or compelling" standard is the standard which should be applied when the reason for leaving the job was for personal reasons, under Section 8-1001(c)(1)(ii). Wilson v. Vincent A. Butler and Associates, Inc., 1691-BR-93.

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 the claimant voluntarily quit 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 been met.

An employee should be able to adequately communicate with their employer about employment situations. In the case at bar, the employer did not speak to the claimant, in person, at all for a period of time even though the claimant attempted to converse about her job duties. So, the claimant attempted to communicate with her employer through the telephone. The employer would only answer a question shortly and immediately hang up the phone. The claimant, in not being able to adequately converse with the employer by telephone, resorted to text messaging the employer about job concerns. This is far from appropriate behavior on the part of the employer. The claimant, therefore, had substantial cause to quit her employment that was attributable to, arising from, or connected with the conditions of the employment. The claimant's quitting her employment was due to a valid circumstance.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning June 13, 2010 and for the four (4) weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is reversed.

N Grimes, 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 October 12, 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 : September 07,2010
rm/Specialist ID: USB1C
Seq No: 001
Copies mailed on September 27, 2010 to:

DEBORAH L. MATHEWS
MEDELL VENTURES INC
LOCAL OFFICE #65