

**- CORRECTED DECISION -**

Claimant:  
LALEH YOUSEFI

Decision No.: 1600-BR-13

Date: May 1, 2013

Appeal No.: 1142446

S.S. No.:

Employer:  
THE MILHOUSE LLC

L.O. No.: 61

Appellant: CLAIMANT - 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.

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**- 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: May 31, 2013

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**PROCEDURAL HISTORY**

A Benefit Determination was issued on finding that the claimant, Laleah Yousefi was discharged on December 20, 2010 due to lack of work. There was insufficient information that the discharge was for gross misconduct under *Md. Code Ann., Lab. & Empl. Art., §8-1002*.

The employer timely appealed the benefit determination to the Lower Appeals Division. On December 18, 2011 a hearing was held. On December 28, 2011 a decision was rendered finding that the claimant voluntarily quit her employment without good cause or valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The claimant was denied benefits for week beginning November 21, 2010 and until she became reemployed and earned at least 15 times her weekly benefit amount in covered wages.

The claimant filed a timely appeal to the Board of Appeals (Board). By decision dated June 8, 2012 the Board affirmed the Lower Appeals Division decision.

The claimant filed a timely Petition for Judicial Review in the Circuit Court for Baltimore County. .

By Order dated December 3, 2012, Judge Kathleen Gallogly Cox reversed the Board's decision and remanded the matter to the Board with instructions to "address the termination decision by the Employer and any resulting disqualification from benefits for the employee under LE §§8-1002-1003."

This decision is in response to that Remand Order. The Board finds that the claimant was discharged for gross misconduct.

### REVIEW OF THE RECORD

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

The claimant filed a claim for benefits establishing a benefit year beginning November 21, 2010 with a weekly benefit amount of \$430.

The claimant was employed part-time by the Milhouse LLC, trading as Edible Arrangement as a customer service clerk from December 17, 2010 until December 22, 2010. She was paid an hourly rate of \$10.00 per hour.

When the claimant began working for the employer, she was receiving unemployment benefits. She explained to her supervisor that she could only work 10 hours per week because if she made over \$100 per week, her unemployment benefits would be reduced and she wanted to retain her full benefits. (*See Transcript page 13*).

The claimant worked for the employer on three occasions. On December 22, 2010, the claimant contacted her supervisor, Mr. Russ and stated that she would like to be paid cash or "under the table" so that she would not be required to report her income to the Agency. The supervisor told her that he would not pay her "under the table". After the claimant made the request, the employer never scheduled the claimant for another shift. The employer did not want to violate the laws and commit a fraud against the Agency.

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)*.

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 Administrative Law Judge's decision on this issue and finds that the claimant was discharged for gross misconduct.

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.

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."

Lying or making a false representation to an employer can constitute gross misconduct. See, e.g., *Shivery v. Slagle's Construction Company, Inc.*, 438-SE-88; *Wilson v. Dept. of Agriculture*, 680-BR-90; *Robinson v. Realty Investment Company, Inc.*, 853-BR-90; *Conaway v. Oxford Realty Services Corporation*, 51-BR-91; *Herche v. Rock-Tenn Company*, 329-BR-94. Falsification of or making false statements in work records may constitute gross misconduct. *Younger v. Washington Suburban Sanitary Comm'n*, 259-BH-91.

In the instant case, the claimant was discharged because she requested the employer to perpetrate a fraud against the Agency by not telling them that she was employed part-time. Although the employer did not tell the claimant she was discharged, his actions of not scheduling her for any further shifts, manifests an intention to discharge her.

The claimant was a customer service representative and charged with handling money for the employer. After the claimant's request to be paid her weekly salary "under the table", so as to avoid reporting it to the Agency, it is quite apparent that the employer could no longer place its trust in the claimant that she would properly handle the money she received. The Board finds that the claimant was discharged for gross misconduct based on the fact that she requested the employer to lie on her behalf to a government agency.

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 met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of §8-1002.

### DECISION

The Board finds based on a preponderance of the credible evidence that the employer met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of §8-1002. The claimant shall be disqualified from receiving benefits from December 19, 2010 until the claimant becomes employed and has earned wages in covered employment that equal at least 20 times the weekly benefit amount of the individual.

The Administrative Law Judge's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

KJK/mr

Copies mailed to:

LALEH YOUSEFI

THE MILHOUSE LLC

JUDD G. MILLMAN ESQ.

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

LALEH YOUSEFI

SSN #

**Claimant**

vs.

THE MILHOUSE 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: 1142446

Appellant: Employer

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

December 28, 2011

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , WILLIAM RUSS

**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 filed a claim for benefits establishing a benefit year beginning November 21, 2010 with a weekly benefit amount of \$430.00.

The Claimant was employed part-time by the Milhouse LLC, trading as Edible Arrangements (Employer) as a Customer Service Clerk, from December 17, 2010 until December 22, 2010. Her rate of pay was \$10.00 per hour.

At the time she started working for the Employer, the Claimant was already receiving unemployment insurance benefits. Shortly after starting work for the Employer, she asked the Employer whether she could

be paid in cash so that she would not have to report her income. This way, her unemployment insurance benefits would not be affected by her earnings. She was concerned that if she made too much money, her unemployment benefits would be reduced.

The Employer refused to change the terms of her payment arrangement. The Employer determined that she voluntarily quit her job when she declared that she wanted to change the payment arrangement, which the Employer refused to accept.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Empl. 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 THE EVIDENCE**

I considered the testimony of the parties in reaching this decision as well as the exhibit introduced by the Employer. I decided the facts on the credible evidence as determined by me. The Claimant had the burden to show, by a preponderance of the credible evidence, that he 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.

The Claimant argued that she never requested that she be paid in cash so that she would not have to report the earnings and thereby potentially impact the unemployment compensation benefits she was receiving. I do not find her testimony credible. If she was concerned about her earnings from the Employer impacting her unemployment benefits, she should have raised the issue prior to accepting the job with the Employer. She only worked for the Employer for three days. The Employer's representative testified persuasively that shortly after starting work, she expressed that she wanted to earn her pay in a way that would not impact her receipt of her full unemployment benefits. Her request was to be paid in cash. This is clearly not a valid circumstance or good cause for leaving her job. Although she wanted to return to work, the Employer was justified in not accepting her back under the conditions she imposed.

### **DECISION**

IT IS HELD THAT the Claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Section 8-1001 of the Labor and Employment Article of the Maryland Annotated Code. Benefits are denied for the week beginning November 21, 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.

*Stuart G. Breslow*

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Stuart G. Breslow  
Administrative Law Judge

### **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 January 12, 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 : December 14,2011  
CH/Specialist ID: WCP2T  
Seq No: 003  
Copies mailed on December 28, 2011 to:  
LALEH YOUSEFI  
THE MILHOUSE LLC  
LOCAL OFFICE #61