

**- DECISION -**

Claimant:	Decision No.:	1733-BR-14
ANTOINETTE T MONROE	Date:	July 23, 2014
	Appeal No.:	1407289
	S.S. No.:	
Employer:	L.O. No.:	64
PINKERTON GOVERNMENT SERVICES INC	Appellant:	Joint Employer and 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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**- 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: August 22, 2014

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant was employed as a fulltime site supervisor for Pinkerton Security Services, Inc., from December 8, 2009 until February 14, 2014.

The employer discovered through an audit of the benefits acknowledgement forms that several of the forms did not match the signatures on other company forms. When

questioned, the claimant admitted that she signed the forms for three officers, with their permission, in violation of company policy. The claimant also admitted to signing timesheets for employees in violation of company policy. The claimant forged the employee's signatures to meet her employer's deadline. There is no indicee on the signature page to show that the claimant was signing on the employee's behalf.

In a special meeting with the claimant, held months before this incident, the employer specifically directed the claimant to obtain the employees signatures because the signatures of the employees were needed to meet statutory requirements.

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); 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 failure to follow workplace rules or procedures can constitute gross misconduct. See, e.g. *Kidwell v. Mid-Atlantic Hambro, Inc.*, 119-BH-86; *Ullman v. Anne Arundel County Public Schools*, 498-BR-93.

The weight of the credible evidence established that the claimant failed to follow company procedures when she signed timesheets and health care benefit forms on behalf of fellow employees. The claimant had the permission of the employees to sign the forms on their behalf. However, the claimant signed the other signatures without any notation that this was *per procurationem* or other evidence that the claimant signed on their behalf. The claimant's directive was to secure the employees' signatures on the

documents. The claimant signed the names to meet her employer's deadline. Additionally, the claimant signed employees' names on timesheets because they forgot to sign them or to meet the employer's deadlines.

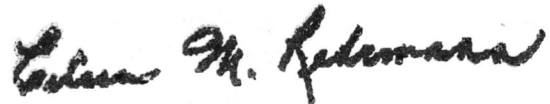
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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 *Maryland Annotated, Labor & Employment Article, § 8-1002*. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

### 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. The claimant is disqualified from receiving benefits from the week beginning February 9, 2014 and until the claimant becomes re-employed, earns at least twenty five times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

ANTOINETTE T. MONROE  
PINKERTON GOVERNMENT SERVICES  
PINKERTON GOVERNMENT SERVICES  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ANTOINETTE T MONROE

Before the:

**Maryland Department of Labor,  
Licensing and Regulation  
Division of Appeals**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

SSN #

**Claimant**

vs.

PINKERTON GOVERNMENT SERVICES  
INC

**Employer/Agency**

Appeal Number: 1407289

Appellant: Joint Employer and  
Claimant

Local Office : 64 / BALTOMETRO  
CALL CENTER

April 17, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, DONNA KLAUZA, KEVIN TRIBULL

**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, Antoinette T. Monroe was employed as a full time site supervisor for Pinkerton Government Services Inc. The claimant worked for this employer from December 8, 2009 to February 14, 2014. The claimant's wage at the time of separation from this employment was \$26.00 per hour.

The claimant was discharged from this employment for falsification of records on an isolated occasion. The employer's policy, of which the claimant was aware, provides that falsification of company records will result in immediate termination. (Employer Exhibit #1, #2)The incident which led to the claimant's discharge occurred sometime in December, 2013 when the employer discovered through an audit of the

Open Benefits Acknowledgement form that several of the forms did not match signatures on other forms provided to the employer. (Employer Exhibit #3) When questioned by the employer, the claimant admitted to signing the forms herself for three (3) "officers" rather than getting the "officers" to sign, and that she had permission from the "officers" to sign the forms on their behalf. The employer had no way to determine whether the "officers" received the required benefit documentation mandated by the Open Enrollment Process subjecting the employer to legal and financial implications. (Employer Exhibit #4)

Specifically, the employer had a meeting on October 5, 2013 to emphasize that each Site Supervisor was responsible for ensuring that each employee at their facility received a benefit action form and that the employee sign the form to confirm receipt of the documents. The claimant missed this meeting due to other obligations. Subsequently, the employer met with the claimant on October 29, 2013 to receive the Open Benefits Acknowledgment forms. The claimant was aware that the forms had to be submitted to the employer no later than November 15, 2013, and signed the names of the "officers" in order to be in compliance with the employer's deadline. The claimant was discharged after the employer completed its investigation of the incident.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Section 8-1003 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 (1974).

### **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 employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has been met.

The credible testimony presented at the hearing indicates that the claimant was discharged from this employment for forging the signatures of three "officers" on an isolated occasion. The claimant was aware that falsification of records would result in immediate termination under the employer's policy. The employer testified credibly that the claimant forged the signatures of the names of the "officers" and the claimant acknowledged that she did so with the permission of the "officers" in order to meet the employer's deadline. There is no evidence that the claimant's violation of policy was done as a deliberate and intentional act to disregard of the employer's policy. The Hearing Examiner therefore concludes that the claimant's violation of company policy does not warrant a finding of gross misconduct.



The employer cited an incident in 2012 that was too remote in time to reasonably justify a decision to discharge in 2014.

Accordingly, I hold that the claimant committed a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engaged in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises. The minimum disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.

### DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. Benefits are denied for the week beginning February 9, 2014 and for the 9 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](mailto: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 modified.



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P A Butler, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 May 2, 2014. 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: April 08, 2014

DAH/Specialist ID: RBA46

Seq No: 001

Copies mailed on April 17, 2014 to:

ANTOINETTE T. MONROE  
PINKERTON GOVERNMENT SERVICES  
LOCAL OFFICE #64