



# Maryland

## Department of Economic & Employment Development

William Donald Schaefer  
Governor  
Mark L. Wasserman  
Secretary  
Board of Appeals  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: (410) 333-5032

### - DECISION -

Claimant:  
EDWARD B. WINSTON JR

Decision No.: 1803-BR-93  
Date: October 28, 1993  
Appeal No. : 9315906  
S.S. No.:  
L.O. No.: 40  
Appellant: Claimant

Employer:  
GLENELG COUNTRY SCHOOL INC

Issue: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1002.

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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 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: November 27, 1993

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### REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. The Hearing Examiner did not find the claimant to be credible. The Board rarely reverses the credibility determination of the Hearing Examiner and finds no reason to do so in this case.

The Board concludes that the claimant's actions amount to gross misconduct, connected with his work, within the meaning of LE, §8-1002. The Board however, concludes that aggravated misconduct, within the meaning of LE, 38-1002.1 has not been proven.

Aggravated misconduct is defined in LE, §8-1002. 1(a), in pertinent part as:

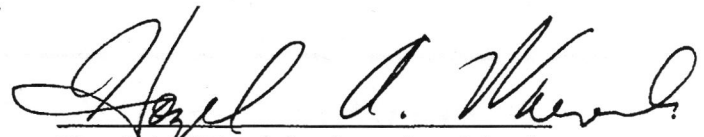
. . intentional conduct by an employee in the workplace that results in... (ii) property loss or damage to the property of the employer . . . .


The claimant was granted jury duty leave. When the jury duty did not materialize, he should have either reported to work or requested that the leave be changed to compensatory time. He did neither. His conduct was deceitful and violated the employers rules, thus amounting to gross misconduct. However, there was no property loss to the employer. Therefore, it is not aggravated misconduct. While the disqualification until the claimant earns twenty times his weekly benefit amount remains in effect, the deletion of his employer's wages from his records is reversed.

#### DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning June 27, 1993 and until he becomes reemployed, earns at least twenty times his weekly benefit amount (\$4,460.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed.

  
Hazel A. Warnick, Associate Member

  
Donna P. Watts, Associate Member

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Copies mailed to:  
EDWARD B. WINSTON JR  
GLENELG COUNTRY SCHOOL INC  
LOCAL OFFICE #40  
MARC PETERSON, ESQUIRE

# **UNEMPLOYMENT INSURANCE APPEALS DECISION**

EDWARD B. WINSTON JR

Before the:

SSN :

**Claimant**

vs.

GLENELG COUNTRY SCHOOL INC

**Employer/Agency**

**Maryland Department of Economic and  
Employment Development**

**Appeals Division**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(401) 333-5040

Appeal Number: 9315906

Appellant: Claimant

Local Office: 40 / Eastpoint

September 10, 1993

**For the Claimant:** PRESENT, MARC PELTERSON, ESQUIRE

**For the Employer:** JOHN VARNER

**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 1001 (Voluntary Quit for good cause), 1002 -1002.1 (Gross/Aggravated Misconduct connected with the work) or 1003 (Misconduct connected with the work).

## **FINDINGS OF FACT**

The claimant was employed from October, 1992 to July 2, 1993 as a painter at the rate of pay of \$11.00 per hour. There was a dispute as to the facts of this case, but after analyzing the evidence and weighing the credibility of the witness, the facts are determined to be as follows.

The claimant was summons for jury service on November 24, 1992, but was not required to report. On November 22, 1993, the claimant filled out his time sheet indicating court, on November 23 and November 24, 1992, for eight hours each day, and submitted the time sheet to his employer. The employer gave the claimant off on the 23 and 24 of November, 1992 for jury duty and paid the claimant his wages for those days. The employer later discovered the above facts when the claimant was resummons for jury duty in June, 1993, and discharged the claimant on July 2, 1993 for falsifying time records.

## CONCLUSIONS OF LAW

The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1 defines "Aggravated Misconduct" as intentional conduct by an employee in the workplace that results in a physical assault upon or bodily injury to or property loss or damage to the property of the employer, fellow employees, sub-contractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's product or services.

## EVALUATION OF EVIDENCE

On November 22, 1992, the claimant intentionally filled out his time sheet showing court "for jury duty on November 23, 1992, when in fact he was not summons for jury duty until November 24, 1992. The claimant is responsible for accuracy of the time sheets he fills out and submits. Additionally, the claimant submitted the time sheet claiming jury duty on November 24, 1992, even though he had been excused from jury duty. The false time sheet led to the claimant being paid wages for two days of jury duty they had not served. This constitutes a loss to the employer through fraud.

The claimant alleges that he called his immediate supervisor, when he found out that he did not have to serve on a jury, and requested comp time instead of jury duty time. However, I find the claimant not a credible witness. The claimant did submit a letter from his former supervisor stating "days in question were comp days." This letter was not given much weight in that it is an unsworn hearsay document, is refuted by the fact that the claimant's time sheet was never changed, "and is too vague to show that November 23 and November 24 of 1992 are the days being addressed.

Even if I believe the claimant called his supervisor to request compensatory days, it would only prove that the claimant upon being excused from the jury attempting to cover up the fraud that initiated by the claimant's jury duties starting November 23, 1992, when in fact he was not summons until November 24, 1992. This attempt, if it had been made, did not stop the fraud from costing the employer the inappropriate payment wages.

The employer has a burden of proof by the preponderance of the evidence to show that the claimant was discharged for a disqualifying reason within the meaning of the Law. The employer had met that burden of proof in this case. The evidence shows that the claimant intentionally submitted a false time sheet which resulted in a property loss, which constitutes aggravated misconduct within the meaning of the Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1.

## DECISION

The claimant was discharged for aggravated misconduct within the meaning of The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1. Benefits are denied for the week beginning June 27, 1993 and until the claimant becomes re-employed and earns at least twenty times the claimant's weekly benefit amount in covered employment and thereafter becomes unemployed through no fault of the claimant.

Wages paid to the claimant by this employer are not to be used to determine the weekly benefit amount, under Section 803 of this law, for any benefit year.

The determination of the Claims Specialist is reversed.

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Jon M. Will, ESQ.  
Hearing Examiner

### **Notice of Right of Further Appeal**

Any party may request a further appeal **either in person or by mail** which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street; Baltimore, MD 21201. Your appeal must be filed by **September 27, 1993.**

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

Date of hearing: September 7, 1993

DW/Specialist ID: 40352

Seq. No.: 001

Copies mailed on September 10, 1993 to:

EDWARD B. WINSTON JR  
GLENELG COUNTRY SCHOOL INC  
LOCAL OFFICE #40