

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
*Telephone: (301) 333-5032*

*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

|   |   |
|---|---|
| Decision No.:   | 1958-BR-92  |
| Date:   | November 6, 1992  |
| Claimant: Dolores J. Hill                                   | Appeal No.: 9213560   |
|   | S. S. No.:  |
| Employer: First National Bank<br>M. Schissler Dept. 109-800 | L. O. No.: 8  |
|   | Appellant: EMPLOYER   |
| Issue:  | Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. |

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

December 6, 1992

THE PERIOD FOR FILING AN APPEAL EXPIRES

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

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. However the Board concludes that these facts warrant a different conclusion of law.

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and wilful 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.

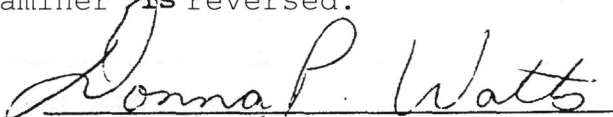
The claimant had previously worked for the Annapolis Federal Savings and Loan. She was discharged from the Annapolis Federal Savings and Loan due to embezzlement of a customer's funds. When the claimant applied for employment with the First National Bank she gave a false reason for her discharge on her job application.

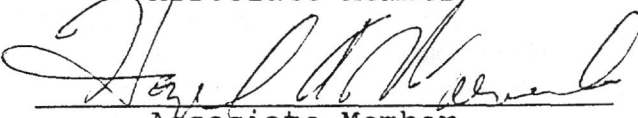
While falsification of an employment application is misconduct, the degree of misconduct (simple or gross) depends on the materiality of the information falsified. Discharge by a prior employer for embezzlement is a highly material factor when applying to work in a bank, and the claimant should have disclosed this fact. Her failure to do so is gross misconduct as defined in the law.

#### DECISION

The claimant was discharged for gross misconduct, connected with the work, as defined in §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning May 3, 1992, until she becomes re-employed, earns ten times (\$2230.00) her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner ~~is~~ reversed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Associate Member

kmb  
COPIES MAILED TO:

CLAIMANT  
EMPLOYER  
Dawn Weglein  
Asst. Vice President

UNEMPLOYMENT INSURANCE - ANNAPOLIS

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
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*Room 501*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

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**— DECISION —**

|           |  |             |                  |
|-----------|--|-------------|------------------|
| Claimant: | Dolores J. Hill  | Date:       | Mailed: 09/16/92 |
|           |  | Appeal No.: | 9213560          |
|           |  | S. S. No.:  |                  |
| Employer: | First National Bank<br>M. Schissler Dept. 109-800  | L. O. No.:  | 008              |
|           |  | Appellant:  | CLAIMANT         |
| Issue:    | Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of the Code of MD, Labor and Employment Article, Title 8, Section 1002. |             |                  |

**— NOTICE OF RIGHT OF FURTHER APPEAL —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

October 1, 1992

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

**— APPEARANCES —**

FOR THE CLAIMANT:

Dolores H. Hill - Present

FOR THE EMPLOYER:

Sherry Kelloughn,  
Asst. Vice President  
and Dawn Weglein,  
Asst. Vice President

FINDINGS OF FACT

The claimant was employed from September 1, 1991 until May 8, 1992, with the First National Bank of Maryland. The claimant was a senior personal banker at a rate of pay of \$19,250.00 per year.

The claimant had previously worked for Vermont Federal Savings and Loan which was eventually taken over by First National Bank of Maryland. All of the Vermont Federal employees were allowed to come with First National of Maryland. However, the claimant was treated as a new employee and executed a employment application for First National on June 30, 1991.

The claimant was terminated from her employment on May 8, 1992. This termination was triggered by a telephone call from an anonymous customer of the employer. The customer advised the employer that the claimant had been discharged from a previous bank employment as a result of an incident of embezzlement. This employer investigated this matter and found that the claimant was accused of having borrowed money from a customer account while she had worked for Annapolis Federal Savings and Loan in 1981. That incident involved the claimant having taken \$1,500.00 from a customer's account without authorization. The money was taken by the claimant as her husband was terminally ill and was under dire financial stress. The claimant made restitution for this \$1,500.00 and there was no criminal prosecution against her. As a result of this incident, the claimant agreed to separate from her employment. However, this was apparently done on cordial terms and Annapolis Federal Savings and Loan advised that she could use that employment as a reference for future jobs. Furthermore, she specifically inquired as to the reason that would be given as to the separation. It was agreed that she could list needed at home as the reason for her separation from Annapolis Federal Savings and Loan.

As grounds for the separation from First National, the employer alleges that the claimant falsified her employment application with First National. The application itself and the employer's policy procedures requires that misstatements may be cause for discharge. In listing the claimant's past employment, she noted the reason for leaving Annapolis Federal Savings and Loan was "needed at home." There was no disclosure regarding this incident of her "borrowing" money from a customer's account.

It should be noted that the claimant had received satisfactory evaluations in her work with First National. The claimant was separated because of her alleged misstatement on the employment application and the fact that the employer felt that a customer

advising the employer of the claimant's dishonesty was improper and merited termination.

#### CONCLUSIONS OF LAW

Obviously, the conduct of the claimant taking funds from a customer's account was with a previous employer over ten years ago. That conduct is not grounds for any disqualification in the instant case. The claimant's statement on her application for First National was that she left the employment with Annapolis Federal because she was needed at home. That was partially true as the claimant's husband was extremely ill. Furthermore, she had discussed the reason for separation with Annapolis Federal and agreed with that institution as the reason for her separation from that employment. However, the claimant admitted, but not for the incident with the customer's account she would have been continuing to work with Annapolis Federal. In view of the totality of the circumstances, it appears that the claimant was not totally honest with First National in its employment application process, however, the employer's request for information was not sufficiently detailed.

The Code of Maryland, Labor and Employment Article, Title 8, Section 100(a)(1)(i), (ii) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

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 the Code of Maryland, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113).

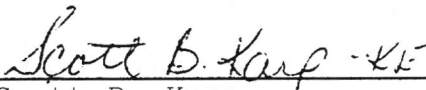
#### DECISION

It is held that the claimant was discharged, but not for gross misconduct connected with the work, within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1002.

No disqualification is imposed upon the claimant pursuant to that Section of the Law.

It is further held that the claimant was discharged for misconduct connected with the work, within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1003. The claimant is denied benefits for the week beginning May 3, 1992 and for the four weeks immediately following.

The determination of the Claims Examiner is reversed.

  
\_\_\_\_\_  
Scott B. Karp  
Hearing Examiner

Date of Hearing: 09/11/92  
ke/Specialist ID: 08008  
(Cassette Attached to File)

Copies mailed on 09/16/92 to:

Claimant  
Employer  
Unemployment Insurance - Annapolis (MABS)

Dawn M. Weglein,  
Assistant Vice President