

PARRIS N. GLENDENING  
Governor

FRANK W. STEGMAN  
Secretary



Board of Appeals  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
(410) 767-2781  
FAX (410) 767-2787

**- DECISION -**

Claimant:  
JOHNNIE JONES

Decision No.: 02204-BR-95

Date: July 14, 1995

Appeal No.: 9507638

Employer:  
RACE TRACK PAYROLL ACCT INC

S.S. No.:

L.O. No.: 45

Appellant: Employer

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.

**- 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 13, 1995

**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 but reaches a different conclusion.

Employees have an affirmative duty to not have illegal drugs in their system when they report to work. The claimant does not refute the fact that he failed a random drug test by testing positive for cocaine.

The Board finds that the unrefuted test results alone support a finding of gross misconduct within the meaning of the Maryland Labor and Employment Article, Section 8-1002, even without the testimony of the employer at the hearing. The Board finds that the drug test result speaks for itself.

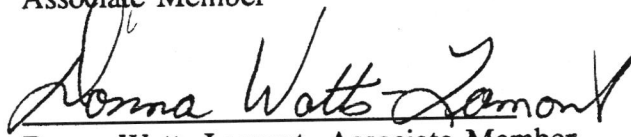
### DECISION

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 February 5, 1995 and until he becomes reemployed, earns at least twenty times his weekly benefit amount (\$3,300) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr.  
Associate Member



Donna Watts-Lamont, Associate Member

km

Copies mailed to:

JOHNNIE JONES  
RACE TRACK PAYROLL ACCT INC  
ROBERT B. VAN DYKE, ASST. GEN. COUNSEL  
Local office - #45

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

JOHNNIE JONES  
5026 PEMBRIDGE AVE  
BALTIMORE, MD 21215-5129

SSN #217-54-4701

**Claimant**

Vs.

RACE TRACK PAYROLL ACCT INC  
RT 198 & RACE TRACK RD  
LAUREL, MD 20707-0130

**Employer/Agency**

Before the:

**Maryland Department of Economic and  
Employment Development**

**Appeals Division**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 9507638

Appellant: claimant

Local Office: 45 / Northwest

May 25, 1995

**For the Claimant:** PRESENT

**For the Employer:**

**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 1003 (misconduct connected with the work).

### **FINDINGS OF FACT**

The claimant was an admissions clerk until he was terminated on February 5, 1995. The employer gave the claimant a random drug test and he tested positive for cocaine. The claimant does not dispute the results of the test.

However, the employer was not present to present any testimony about a drug or alcohol policy. The claimant established that other workers come to work until the influence of drugs and alcohol and are not subjected to any random drug testing and are still employed by the company.

He offered to take a random drug test weekly if he could continue his employment, but the employer rejected this offer.

The claimant established that at the time of his drug taking he had a lot of pressure, including the recent death of his mother from cancer, a sibling who had cancer and various complaints about his working conditions. He was constantly being accused of being short. He contends that he was correct in his work and that a particular supervisor who counted his work continually made allegations that he was short but the same was not true.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994) provides that an individual shall be disqualified from receiving benefits where he or she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards that an employer has a right to expect and shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training. et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994) provides for a disqualification from benefits where the claimant is discharged (or suspended) as a disciplinary measure for acts connected with the work which the Secretary determines to be misconduct. The term "misconduct" is undefined in the statute but has been judicially defined as "... a transgression of some established rule or policy, 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." Rogers v. Radio Shack, 271 Md. 126, 132, 314 A.2d 113 (1974).

### EVALUATION OF EVIDENCE

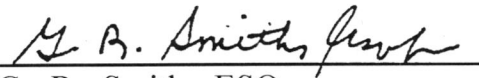
The employer failed to establish that the claimant was discharged because of gross misconduct in connection with the work. The employer was not present during this appeal hearing and failed to present any evidence about a drug and alcohol policy if the employer had the same. Thus, while the claimant did not dispute the results of the drug test, he established that the employer's work rules as applied in practice do not call for immediate termination if the employer is under the influence of either drugs or alcohol. The claimant established that there were other workers employed by the employer with drug and alcoholism problems but that they have not been subjected to any random drug testing or discharged for this reason.

However, the claimant's separation was because of misconduct connected with the work. The claimant has an obligation to report to work not under the influence of drugs.

## DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994). Benefits are denied for the week beginning February 5, 1995 and for the nine weeks immediately following.

The determination of the claims examiner is reversed.

  
G. R. Smith, 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 **June 9, 1995**.

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

Date of hearing: May 11, 1995  
CH/Specialist ID: 45543  
Seq. No.: 001  
Copies mailed on May 25, 1995 to:

JOHNNIE JONES  
RACE TRACK PAYROLL ACCT INC  
LOCAL OFFICE #45