-DECISION-

Claimant:
JENNIFER E CHANEY

Employer:
GREATER BALTIMORE MEDICAL CTR

Decision No.: 2452-BR-12

Date: May 11, 2012

Appeal No.: 1119351

S.S. No.:

L.O. No.: 60

Appellant: CLAIMANT - REMAND FROM COURT

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: June 11, 2012

REVIEW OF THE RECORD

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

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."

In its appeal the employer contends that the claimant's "behavior shows a wanton disregard of her job duties and patient care expectations." The employer also reiterates its testimony from the hearing and argues that the claimant had successfully performed her required duties in the past.

The Board has thoroughly reviewed the record in this matter and finds that the weight of the credible evidence supports the hearing examiner's decision in this case. The claimant was careless in performing her duties; however her actions were not intentional so as to support a finding of gross misconduct.

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 has met its burden of demonstrating that the claimant's actions rose to the level of misconduct within the meaning of *§ 8-1003*. The decision shall be affirmed for the reasons stated herein and in the hearing examiner's decision.

DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article Maryland Code Annotated, Title 8, Section 1003. The claimant is disqualified from receiving benefits from the week beginning April 17, 2011 and the nine weeks immediately following.

The Hearing Examiner's decision is affirmed.

Donna Watts-Lamont, Chairperson

Eileen M. Rehrmann, Associate Member

RD
Copies mailed to:
JENNIFER E. CHANEY
GREATER BALTIMORE MEDICAL CTR
CHRISTINA N. BILLIET ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

JENNIFER E CHANEY

SSN #

Claimant

Vs.

GREATER BALTIMORE MEDICAL CTR

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: 1119351
Appellant: Claimant
Local Office : 60 / TOWSON CALL CENTER

June 30, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, DIONE POWELL, PAT STEIN

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

FINDINGS OF FACT

Jennifer Chaney (Claimant) began working for Greater Baltimore Medical Center (Employer) on September 22, 2008. At the time of her separation, on April 18, 2011, the Claimant was employed part-time, three days a week, as a File Clerk, earning $11.30 per hour.

The Claimant filed a claim for benefits establishing a benefit year beginning April 24, 2011. She qualified for a weekly benefit amount of $102.00.

From September 2008 to August 2010, the Claimant had been satisfactorily performing her job duties; however, towards the end of August 2010, the Employer began noticing issues with her job performance. At about this same time, in August 2010, the Employer hired a new secretary by the name of Toni.

On August 30, 2010, the Employer met with the Claimant to discuss concerns it had that she was mailing new patients incorrect new patient packets. The Employer told the Claimant that by sending out the wrong packet, it caused poor customer service and conveyed a message that the office did not know what it is doing. The Employer counseled the Claimant to check the appointment type against the new patient packet to be certain that she sends out the correct forms in the future. Thereafter, the Employer treated this conversation as a verbal counseling and memorialized it on a Disciplinary Action Form, dated August 30, 2010. (Employer Ex. #1.) The Claimant had the opportunity to respond during the meeting or file an appeal within five days to challenge the action taken against her, but she did not.

On November 2, 2010, a patient of Dr. Hinton's called the front office and began yelling at Toni because the patient was upset that the doctor had not returned her telephone message from October 25, 2010. "Toni looked for the chart and found it buried under a pile of papers on [the Claimant's] desk with a message dated 10/25/10 that [was] not given to Dr. Hinton." (Employer Ex. #2.) According to the Employer, another patient had also called the front office, leaving a message. That chart, too, was found on the Claimant's desk. On November 3, 2010, the Employer met with the Claimant to discuss this incident with her and counseled her to "make sure that all messages are given to Dr. Hinton or the appropriate office personnel prior to leaving for the day." *Id.* Thereafter, the Employer issued a written warning and memorialized it on a Disciplinary Action Form, dated November 3, 2010. (Employer Ex. #1.) The Claimant had the opportunity to respond during the meeting or file an appeal within five days to challenge the action taken against her, but she did not.

On or about April 11, 2011, the Employer discovered five original letters, one dated March 10, 2011 and the other four dated March 23, 2011, in the Claimant's desk drawer that had not been mailed. Three of the five letters involved test or lab results as well as scripts for prescription therapy based on those results. Two of the five letters were correspondence to other physicians concerning mutual patients. In all instances, a copy of the letter was placed in the chart giving the impression that the letters had in fact been mailed. In the process of discovering these letters, the Employer also found a file folder containing old filing as well as a patient chart with an encounter written on it which was almost a week old. On April 11, 2011, the Employer confronted the Claimant regarding these issues. In response, the Claimant stated that she could not mail the letters until Dr. Hinton signed them and when she attempted to get the signature, the doctor was out of the office. The Employer checked the doctor's schedule against the Claimant's comments and the dates did not add up. Consequently, the Employer found the Claimant failed to provide a valid reason or explanation as to why the letters sat in her desk from March 10, 2011 to April 7, 2011. The failure to promptly mail these letters negatively impacted patient care.

On April 18, 2011, Dione Powell, Human Resource (HR) Manager, and Pat Stein, Practice Manager, met with the Claimant to discuss their concern regarding the correspondence, filing and patient charts. During this meeting, the Employer told the Claimant that it felt she was "putting Dr. Hinton at risk, creating poor customer service with patients and physicians, and is creating more work for others who work in the office with her." (Employer Ex. #3.)

As a result of this last incident, the Employer terminated the Claimant. The Employer summarized the incident in an undated Disciplinary Action Form. (Employer Ex. #3.) The Claimant did not sign or receive a copy of the form at the time of her departure.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202 (1958); Painter v. Department of Emp. & Training, et al., 68 Md. App. 356 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362 (1993).

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).

An employee's deliberate refusal to obey the employer's direct and reasonable orders is insubordination and may constitute misconduct or gross misconduct. The reasonableness of the order depends upon the circumstances. If the employer demonstrates that an order was reasonable, then the employee must establish that he/she was justified in not complying. Moreover, negligence in the performance of one's duties can also constitute misconduct or gross misconduct depending upon the degree of the negligence and the nature of the job. *See* Alexander v. Helping Hand, Inc., 950-BH-89.

However, if a claimant is working to the best of her ability, then the conduct may not be necessarily be deemed gross misconduct or gross indifference to the employer's interests. *See* Dreher v. Provident Bank of Maryland, 1216-BR-88 (The employer proved that during the last six to nine months, the claimant made many careless mistakes or omissions that resulted in problems with customers' cases and delayed several settlements. However, the employer failed to prove that the claimant's neglect was accompanied by a gross indifference to the employer's interest or resulted from a regular and wanton disregard of her obligations. The claimant was discharged for misconduct). *See also* Andreski v. Crofton Convalescent Center, 1431-BR-93 (The claimant nurse was fired for an accumulation of job deficiencies. The claimant made none of these mistakes deliberately, and she was not grossly negligent, but she was not as careful in her job duties as she should have been. Although mere incompetence is not misconduct, there was a degree of negligence in the claimant's conduct which amounts to misconduct.)

EVALUATION OF THE EVIDENCE

The Employer has the burden to prove by a preponderance of the evidence that it discharged the Claimant for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law before the Claimant can be denied benefits. Ivey v. Catterton Printing Company, 441-BH-89. In this case, the Employer has demonstrated that the discharge was due to simple misconduct.

I considered the testimony of the Claimant; and that of Pat Stein, Practice Manager, and Dione Powell, HR

Manager, for the Employer; and the exhibits accepted into evidence in reaching this decision. Where the evidence was in conflict, I decided the facts on the evidence I determined to be the most credible.

Based on the credible evidence submitted, I find that the Employer has met its burden to establish that it discharged the Claimant from employment on the grounds of job performance, following warnings. I further find, however, that the Employer failed to meet its burden to establish that it discharged the Claimant for ongoing deliberate, willful, and wanton disregard of the Employer's needs and interests relating to the reasonable job performance requirements. I found instead that the record was persuasive to show that the discharge was for simple misconduct.

According to Ms. Stein, the Claimant's position had a direct impact on patient care and treatment; therefore, the Employer required her to be proficient and accurate in the performance of her job duties. As described in the findings of fact, Ms. Stein detailed how the Claimant's performance negatively impacted patient care by failing to promptly mail correspondence to patients that involved lab/test results and subsequent prescription therapy, as well as new patient packets. Ms. Stein also explained, compounding the problem, was the fact that the Claimant's job performance also began to negatively impact on Dr. Hinton's reputation as it relates to office management, other physicians and patients. The last incident was a good example of that, Mr. Stein indicated.

The Claimant testified that she was only a File Clerk by title and pay. She felt that she was given too many other tasks that fell outside of her job description, such as answering phones, scheduling appointments, cleaning up the rooms and instruments, preparing prescriptions, and follow-up on benefit papers. Moreover, according to the Claimant, given her part-time work schedule, it was impossible for her to complete all these tasks competently. For instance, she described the difficulty she encountered obtaining Dr. Hinton's signature on correspondence or relaying messages to her when she worked one day and was off the next. Here, she acknowledged speaking to the patient on October 25, 2010 and taking down a message for Dr. Hinton; however, she also testified that she did not give the note to Dr. Hinton because the patient told her that she would call back on the next day. The Claimant explained that she did not follow-up with Dr. Hinton the next day because it was her regularly scheduled day off.

The Claimant also felt that co-workers oftentimes blamed her for mishaps on her days off when she was unable to defend herself. Here, the Claimant acknowledged sending one wrong new patient package, but she felt others, like Toni, were doing the same. Moreover, with regard to the one instance she sent the wrong package, she felt the error was harmless since the patient's medical needs were incompatible with that of medical practice and went to another doctor.

The Claimant further maintained that she had been an excellent employee until such time that the Employer hired Toni.

Based on the totality of the circumstances, it is clear from the Employer's presentation that the Claimant committed numerous careless mistakes. While the Claimant's job performance directly and negatively impacted patient care, the Employer failed to show that the Claimant's actions amounted to a regular and wanton disregard of her obligations. In fact, the Employer openly commented that the Claimant had been performing her job on task prior to August 2010 and could not pinpoint any negative personal issues impacting on the Claimant's job performance. On the other hand, the Claimant credibly and persuasively testified that the Employer placed her in a precarious situation by having her perform numerous tasks that

fell outside of her job description which were not conducive to her part-time schedule. The Employer's witnesses were silent on this point and there was no effort made by the Employer to challenge the Claimant's testimony on this point either. The Claimant also credibly presented a scenario where co-workers took advantage of her part-time schedule by explaining away mishaps in the office as her fault or, alternatively, failing to follow-up on tasks they agreed to do for her when she was out. I am swayed by the Claimant's testimony that this breakdown in camaraderie began when Toni joined the practice as a secretary. Again, the Employer did not dispel this belief in their questions of the Claimant or in its testimony. Finally, I am persuaded by the Claimant's testimony that she worked to the best of her ability in a difficult situation. Therefore, the Claimant's actions amount to simple misconduct.

As such, 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. An unemployment 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 simple 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 April 17, 2011 and for the nine 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 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 REVERSED.

K. Chapman

K. Chapman
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 July 15, 2011. 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: June 13, 2011
AEH/Specialist ID: UTW35
Seq No: 001
Copies mailed on June 30, 2011 to:

JENNIFER E. CHANEY
GREATER BALTIMORE MEDICAL CTR
LOCAL OFFICE #60