

- DECISION -

Claimant:
XAVIER A STUKES

Decision No.: 2546-BR-06

Date: December 05, 2006

Appeal No.: 0615324

S.S. No.:

Employer:
AMERICAN NATIONAL RED CROSS

L.O. No.: 60

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.

- 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: January 04, 2007

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the Hearing Examiner's findings of fact but reaches a different conclusions of law.

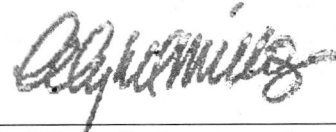
Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

A higher degree of care is required of claimant's whose work involves critical risks to the life and health of others. The claimant breached her duty of care to the employer in this regard. Therefore, a finding of gross misconduct is supported. Winestock v. Dimensions Health Corp., 681-BR-91. The Hearing Examiner's decision shall be reversed.

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. He is disqualified from receiving benefits from the week beginning July 9, 2006 and until he becomes re-employed, earns at least twenty times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member

Francis E. Sliwka, Jr., Associate Member

Copies mailed to:

XAVIER A. STUKES
AMERICAN NATIONAL RED CROSS
RED CROSS
PIXIE-ANN ALLEN
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

XAVIER A STUKES

SSN #

Claimant

vs.

AMERICAN NATIONAL RED CROSS

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: 0615324

Appellant: Employer

Local Office : 60 / TOWSON CALL
CENTER

October 17, 2006

For the Claimant : PRESENT

For the Employer : PRESENT , PIXIE-ANN ALLEN, KIMBERLY PIETRUSZKA, VERLIN MEEKIN,
CANDICE YURY-WALKER

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 began working for the employer on August 1, 2005. The claimant last worked for the employer on July 12, 2006, as a full-time collection technician, earning \$17.66 per hour.

The claimant was discharged from the employment due to failure to follow regulated procedures resulting in the impact on blood units. Specifically, the culminating event occurred on July 6, 2006 when the claimant failed to properly complete quality control sheets at a blood drive. The claimant failed to check the monitors to see if they passed the visual inspection and self-test. The claimant had failed to complete the same quality control sheets on or about June 29, 2006 when he again omitted the visual inspection and

self-test. The claimant's failure to do so jeopardized the blood units. The employer had followed a progressive disciplinary process when they discharged the claimant as he previously had received a final warning in June 2006. The claimant failed to properly identify a blood donor and then acted inappropriately when confronted with the issue by the employer. The claimant did sign the final written warning on or about June 5, 2006. The claimant previously received a written warning on March 27, 2006 which he signed as the employer believed that the claimant made inappropriate comments resulting in warnings. An initial warning was an oral warning on or about February 8, 2006 as the claimant had made several errors when he failed to offer a donor a BDR and failed to give the donor a copy of the VCJD list. Lastly, the claimant was aware of the employer's policies in terms of distributing material to donors as well as the responsibility to write down information regarding temperatures immediately.

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, 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. 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

In a discharge case, the employer has the burden of proof, by a preponderance of the credible evidence, to show that the claimant engaged in behavior rising to the level of misconduct or gross misconduct. In the instant case, the credible evidence established that the claimant was discharged due to an accumulation of job deficiencies. The claimant received multiple warnings and the culminating event occurred when the claimant failed to complete quality control sheets as he did not complete the visual inspection and self-test information, thus jeopardizing blood units. The claimant was aware of the responsibility and he admitted that he omitted the information when he failed to complete the documents appropriately. Additionally, there were prior warnings that the claimant received due to errors and inappropriate behavior. The claimant certainly did not make mistakes deliberately and he was not grossly negligent, but he was not as careful in his job duties as he should have been. There was certainly a degree of negligence in the claimant's conduct which amounts to simple misconduct, but does not rise to the level of gross misconduct. Andreski v. Crofton Convalescent Center, 1431-BR-93.

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 July 9, 2006 and for the seven 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.



M M Medvetz, 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 410-949-0022 or 1-800-827-4839. 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.

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 November 01, 2006. 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

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

Date of hearing: September 29, 2006
CH/Specialist ID: UTW3E
Seq No: 001
Copies mailed on October 17, 2006 to:
XAVIER A. STUKES
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LOCAL OFFICE #60
PIXIE-ANN ALLEN
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