

 **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

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

— DECISION —

Claimant:	Priscilla J. Dancy	Decision No.:	293-BR-93
		Date:	Feb. 19, 1993
		Appeal No.:	9222205
		S. S. No.:	
Employer:	Carroll Luth. Village	L. O. No.:	15
		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.

—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE 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.

March 21, 1993

THE PERIOD FOR FILING AN APPEAL EXPIRES

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant, a bus driver and activity aide for nursing home patients, took ten of the patients in a small bus on a field trip for lunch. After lunch, the claimant and a co-worker left the patients on the bus in the parking lot of a Wal-Mart for 35 to 45 minutes while she did some personal shopping at Wal-Mart. It was a hot day in August. The claimant turned the bus motor off when she left. There was an aide left on the bus with the ten elderly patients.

The Board concludes that the claimant's conduct was gross misconduct. Under §8-1002 of the law, gross misconduct is defined as a deliberate violation of standards the employer has a right to expect, showing a gross indifference to the employer's interest. The claimant's conduct was certainly deliberate. The employer certainly had a right to expect that the claimant would not leave her charges sitting idly on a bus on a hot day while she engaged in a personal shopping trip. The claimant's conduct showed a gross indifference to the comfort and welfare of her patients, and to the employer's interests.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning September 20, 1992 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1,180.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

K:H
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WESTMINSTER

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
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— D E C I S I O N —

Claimant:	Priscilla J. Dancy	Date:	Mailed:	01/05/93
				9222205
		Appeal No.:		
		S. S. No.:		
Employer:	Carroll Luther Village	L.O.NO:		015
		Appellant:		EMPLOYER

Issue Whether the claimant was discharged for misconduct connected with the work, within the meaning of the Code of MD, Labor and Employment Article, Title 8, Section 1003.

— 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

January 20, 1993

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.

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant/Present

FOR THE EMPLOYER:

Donald Lewis,
Director, Trudy Via,
Dir. H/R, Grace
Bopst, Activity Aid
and Represented by:
Carol Stroud, UTS

FINDINGS OF FACT

Claimant began working for Employer on December 26, 1988; her last day of work was September 21, 1992. She was employed full time as an activity aid and was compensated at the rate of \$7.10 per hour.

Claimant and two other staff members took ten residents on a bus trip, during which the residents were taken to lunch at a restaurant. Employer's place of business is a convalescent care facility. After lunch and on the return trip home, Claimant who had been driving the bus, stopped at a Wal Mart store which had recently opened. She and one of the other staff members left the bus parked on the parking lot, with the third staff member still aboard, and went into the store. There is dispute between the parties as to how long the two staff members were in the store. Employer contends that the individuals were in the store for approximately forty-five minutes, but Claimant asserts that they were in the store only approximately twenty minutes. Claimant and her co-worker made purchases in the store and then returned to the bus and drove back to Employer's place of business.

CONCLUSIONS OF LAW

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 employers 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).

Many fact in this case are in dispute, and Employer had made allegations of patient abuse on the part of Claimant and her co-worker, alleging that the patients were left in a parked bus on a hot day for forty-five minutes without air conditioning. However, the third employee remained on the bus with the residents and was capable of acting on their behalf. That individual testified that she did not even check to see whether the keys were left in the vehicle so that she could run the air conditioner. Consequently, it is concluded that Claimant's behavior does not constitute gross misconduct within the meaning of the Law.

However, Claimant was responsible for providing an activity for the residents in her charge, consisting of a bus trip away from the facility to have lunch and to take a drive. Although Claimant testified that she stopped at the store to determine whether it was accessible to individuals using wheelchairs or walkers, it

concluded from the totality of evidence that Claimant's testimony is not credible. By her own admission, Claimant was in the store at least twenty minutes, and it is concluded from the preponderance of the evidence that she made a purchase while in the store and before returning to the bus. Her duty was to provide an entertaining trip for the residents, but she instead left them sitting on the parking lot while she did personal shopping. This behavior constitutes misconduct in connection with the work within the meaning of the Law.

DECISION

Claimant was discharged for misconduct by her in connection with her employment. She is disqualified from receiving unemployment insurance benefits for the week beginning September 20, 1992 and the four weeks immediately following.

The determination of the Claims Examiner is reversed.

Date of Hearing: 12/02/92
kc/Specialist ID: 15703
(Cassette Attached to File)

Copies mailed on 02/05/93 to:

Claimant
Employer
Unemployment Insurance - Westminster (MABS)