

**- DECISION -**

Claimant:  
ADRIAN B RICE

Decision No.: 3046-BR-14

Date: November 24, 2014

Appeal No.: 1413194

S.S. No.:

Employer:  
ORLANDO PRODUCTS INC

L.O. No.: 64

Appellant: Claimant

Issue: 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).

---

**- 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: December 24, 2014

---

**REVIEW OF THE RECORD**

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on June 20, 2014. That Decision held the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1002*. Benefits were denied for the week beginning April 13, 2014, and until the claimant becomes reemployed, earns twenty-five times his weekly benefit amount, and then becomes unemployed under non-disqualifying conditions.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument. Sufficient evidence exists in the record from which the Board may make its decision.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts are insufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant did not have medical insurance. The claimant was having a difficult time finding and seeing a doctor because of this lack of insurance and a shortage of personal funds.

The Board concludes these facts warrant a reversal of the hearing examiner's decision.

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002* provides:

- (a) Gross misconduct...
  - (1) Means conduct of an employee that is:
    - i. 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
    - ii. repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations...

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).

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003* provides:

- (a) Grounds for disqualification – an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that unemployment results from discharge or suspension as a disciplinary measure for behavior that the Secretary finds is misconduct in connection with employment but that is not:
- (1) Aggravated misconduct...or
  - (2) Gross misconduct...

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 the employment relationship, during hours of employment or on the employer's premises, within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003*. (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 his appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner’s decision. The claimant does not cite to the evidence of record and makes no other contentions of error. The claimant contends “the Board Member...asked alot [sic] of personal questions...”

The claimant's hearing was held before a Hearing Examiner; no member of the Board of Appeals was part of this hearing or asked any questions. The hearing examiner properly asked questions of the claimant which may have been personal but were asked so that the hearing examiner could gather the information necessary. There was nothing improper about the questions or the hearing examiner's conduct of the hearing. The Board, however, disagrees with his decision and finds this was not gross misconduct.

The claimant legitimately had difficulties seeing a physician to get the information the employer wanted. The claimant did not have the personal resources and did not have any insurance. The claimant could not see a doctor as quickly as the employer wanted. The claimant did not act with deliberate disregard for the employer's expectations in this regard. However, the claimant certainly could have maintained contact with the employer and explained his situation. The Board finds the claimant's lack of communication with the employer was misconduct warranting a benefit penalty.

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 upon a preponderance of the credible evidence, that the employer did not meet its burden of proof and show that the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., §8-1002*. The employer did meet its burden of proof and show that the claimant was discharged for misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., §8-1003*. The decision shall be reversed, for the reasons stated herein.

### DECISION

The Board holds that the claimant was discharged for misconduct connected with the work, within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003*. The claimant is disqualified from receiving benefits from the week beginning April 13, 2014, and the nine weeks immediately following.

The Hearing Examiner's decision is Reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

ADRIAN B. RICE

ORLANDO PRODUCTS INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ADRIAN B RICE

SSN #

**Claimant**

vs.

ORLANDO PRODUCTS INC

**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: 1413194

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

June 20, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , LIBRADO GONZALES

**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**

The claimant, Adrian Rice, began working for this employer, Orlando Products, on February 5, 2014. At the time of separation, the claimant was working as a phone service worker. The claimant last worked for the employer on April 18, 2014, before being terminated for failing to report for work or notify the employer for several days.

The claimant reported to work on April 21, 2014 on crutches, stating that he had broken his leg. The claimant submitted a doctor's note to his supervisor, but the note failed to designate a date on which the claimant was to return. The supervisor informed the claimant that he needed to submit medical

documentation that specifies his return date. The claimant stated that he would be seeing the doctor in the next couple of days and he would get the documentation. For the next seven (7) days the claimant did not report to work, did not contact the employer, and did not submit the medical documentation that the claimant was specifically informed that he needed. The claimant was consequently terminated for his failure to report to work or submit medical documentation supporting the reason for his absence.

### CONCLUSIONS OF LAW

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).

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).

### EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has been met.

In this matter the claimant failed to exercise even a minimal level of compliance with the simple requests of the employer. At the very least the claimant could have contacted the employer to update the employer on the status of the situation. Not doing so for several days is a failure, on the claimant's part, to provide the employer with even a minimal level of professional conduct expected in such circumstances.

Accordingly, I hold that the claimant's actions showed a deliberate and willful disregard of the standards the employer had a right to expect, showed a gross indifference to the employer's interests and therefore constituted gross misconduct in connection with the work. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1002 pursuant to this separation from this employment.

## DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002(a)(1)(i). The claimant is disqualified from receiving benefits from the week beginning April 13, 2014 and until the claimant becomes reemployed and earns wages in covered employment that equal at least 25 times the claimant's weekly benefit amount.

The determination of the Claims Specialist is affirmed.



---

C S Spencer, 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 410-767-2404. 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 to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 07, 2014. 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, 2014

CH/Specialist ID: RWD1D

Seq No: 001

Copies mailed on June 20, 2014 to:

ADRIAN B. RICE  
ORLANDO PRODUCTS INC  
LOCAL OFFICE #64