

**- DECISION -**

Claimant:  
MEHDI ALIPOUR

Decision No.: 3166-BR-14

Date: December 10, 2014

Appeal No.: 1415884

S.S. No.:

Employer:  
HELIX HEALTH SYSTEM INC

L.O. No.: 60

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.

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**- 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 9, 2015

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**REVIEW OF THE RECORD**

The employer has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on July 24, 2014. That Decision held the claimant was discharged for misconduct within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1003*. Benefits were denied for the week beginning May 25, 2014, and the following nine weeks.

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 render its decision.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. The Board adopts the hearing examiner's findings of fact. However the Board concludes that these facts warrant a different conclusion of law and 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:

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 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 decision shall be reversed, for the reasons stated herein.

### DECISION

The Board holds that the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002*. The claimant is disqualified from the receipt of benefits from the week beginning May 25, 2014, and until the claimant has earned twenty-five times his weekly benefit amount and becomes unemployed under non-disqualifying conditions.

The Hearing Examiner's decision is Reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

MEHDI ALIPOUR

HELIX HEALTH SYSTEM INC

HELIX HEALTH SYSTEM INC

Susan Bass, Office of the Assistant Secretary

- (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 its appeal, the employer's representative argues that the claimant's action on May 19, 2014, of reporting the results of a specimen in the computer system, when in fact he had not tested the specimen is not an innocent mistake but rises to the level of gross misconduct. The Board agrees. The claimant made a deliberate and willful decision to enter results in the employer's computer system that he knew were incorrect. This single incident alone is sufficient to support a finding of gross misconduct. The work performed by the claimant was not subject to "short cutting", regardless of how busy the claimant may have been.

The Board as long held that where a claimant's work involves critical risk of life and death, a higher degree of care is required. See *Winestock v. Dimensions Health Corporation*, 681-BR-91. The results entered into the employer's computer system were used to make decisions as to the treatment of patients. The claimant knew this, had previously performed his duties correctly and as such his actions cannot be found to be simple misconduct.

very concerned about making mistakes because of the increased volume of work. The claimant requested a transfer to another department, but his request was not approved.

On May 19, 2014, the claimant failed to process a specimen, but noted in the computer system that the test results showed no change since the previous test. On May 20, 2014, the medical director observed the claimant allegedly asleep in his chair. On May 21, 2014, the claimant incorrectly calculated a test result. The claimant was placed on administrative leave on May 28, 2014, and the incidences were investigated. The claimant was terminated on June 6, 2014.

## 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).

In Dreher v. Provident Bank of Maryland, 1216-BR-88, 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.

In Morales v. Bryan and Associates, Inc., 476-BR-85, the Board of Appeals held "An innocent mistake or incompetence does not constitute misconduct."

## EVALUATION OF EVIDENCE

The employer had the burden to show, by a preponderance of the credible evidence, the claimant's termination was for conduct which rose to the level of misconduct or gross misconduct, pursuant to the Maryland Unemployment Insurance Law. (See Hartman v. Polystyrene Products Company, Inc., 164-BH-83). In the case at bar, the employer met this burden.

The employer provided testimony and documentation the claimant made an error processing a test result. The claimant admitted he made a mistake when he processed the test result, but argued the increased volume of work was a significant factor and contributed to his error. Under Morales v. Bryan and Associates, Inc., the claimant's one mistake, factoring in the substantially increased workload, does not warrant a finding of misconduct.

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

MEHDI ALIPOUR

SSN #

**Claimant**

vs.

HELIX HEALTH SYSTEM 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: 1415884

Appellant: Employer

Local Office : 60 / LARGO

July 24, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, JONI RILEY, NICKI MCKOY, CAROLINE HARRISON

**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, Mehdi Alipour, began working for this employer, Helix Health System, on January 23, 2012 and his last day worked was May 28, 2014. At the time of his discharge, the claimant worked full-time as a medical technologist.

The employer terminated the claimant from his position for failure to follow the employer's policy. The claimant worked the night shift from 11:00 pm to 7:30 am with three other medical technologists, and the team processed the medical tests ordered by the doctors. The employer reduced the number of medical technologists on the night shift down to three including the claimant, and the claimant's workload substantially increased. The claimant worked to complete the test results as rapidly as possible, but was

The employer alleged the claimant fell asleep at work and the claimant denied the allegation. The medical director was not present to testify under oath at the hearing. While testimony regarding the statement made by the medical director is admissible, the hearsay testimony is given less weight than if the witness was present. Therefore, the employer has not shown by a preponderance of the credible evidence that the claimant fell asleep at work.

The employer testified and provided documentation the claimant entered a test result as unchanged from a previous test even the claimant had failed to process the specimen. The claimant admitted he noted there was no change in the test results even though he did not process the specimen. The credible testimony shows that the claimant failed to follow policy, but because it was a first time the offence and the claimant had a substantially increased workload, the employer has not shown the claimant regularly and wantonly disregarded of his obligations. Although gross misconduct is not warranted, under Dreher v. Provident Bank of Maryland, *supra*, the claimant's actions rise to the level misconduct. Accordingly, I hold the employer met its burden in this case and the claimant's discharge was for misconduct, warranting the imposition of a weekly penalty.

### 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 May 25, 2014 and for the 9 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@dldr.state.md.us](mailto:ui@dldr.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.



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E K Stosur, 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 of Further Appeal**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 August 08, 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: July 22, 2014  
DW/Specialist ID: UTW45  
Seq No: 003  
Copies mailed on July 24, 2014 to:

MEHDI ALIPOUR  
HELIX HEALTH SYSTEM INC  
LOCAL OFFICE #60  
HELIX HEALTH SYSTEM INC