

**- DECISION -**

Claimant:  
TARA J RICHARDS TALLIE

Decision No.: 3181-BR-13

Date: July 26 2013

Appeal No.: 1313451

S.S. No.:

Employer:  
LANMARK TECHNOLOGY

L.O. No.: 64

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: August 26, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion 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."

The failure to follow workplace rules or procedures can constitute gross misconduct. See, e.g. *Kidwell v. Mid-Atlantic Hambro, Inc.*, 119-BH-86; *Ullman v. Anne Arundel County Public Schools*, 498-BR-93.

Lying or making a false representation to an employer can constitute gross misconduct. See, e.g., *Shivery v. Slagle's Construction Company, Inc.*, 438-SE-88; *Wilson v. Dept. of Agriculture*, 680-BR-90; *Robinson v. Realty Investment Company, Inc.*, 853-BR-90; *Conaway v. Oxford Realty Services Corporation*, 51-BR-91; *Herche v. Rock-Tenn Company*, 329-BR-94.

In the instant case, the Board finds that the claimant knew she was not to use the flash drive on the computers in the workplace. The claimant was aware and appreciated the importance of the employer's policies and the federal guidelines. While the claimant's actions regarding the flash drive was a single incident of a violation of workplace rules, the claimant compounded the seriousness of the episode when she knowingly and deliberately did not tell the truth regarding the location of the flash drive. The fact that the claimant was nervous is not mitigating. While the Board may have found that the flash drive incident constituted simple misconduct, the claimant's resulting dishonesty regarding the location of the flash drive cannot be overlooked. The fact that the claimant subsequently presented the flash drive does not mitigate the initial deliberate dishonest act. The Board finds the weight of the credible evidence, given the totality of the circumstances, evinced the claimant's gross disregard for her employer's interests rising to the level 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 met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The hearing examiner's simple misconduct decision shall be reversed for the reasons stated herein.

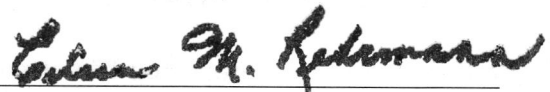
### DECISION

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. The claimant is disqualified from receiving benefits from the week beginning March 31, 2013 and until the claimant becomes re-employed, earns at least twenty five times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

TARA J. RICHARDS TALLIE

LANMARK TECHNOLOGY

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TARA J RICHARDS TALLIE

SSN #

**Claimant**

vs.

LANMARK TECHNOLOGY

**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: 1313451

Appellant: Claimant

Local Office : 64 / BALTOMETRO  
CALL CENTER

May 31, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , ALEXA BROWE

**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, Tara Richards Tallie, worked for the above captioned employer, Landmark Technology, from January 25, 2012 until April 4, 2013 as a logistics analyst earning \$62,000.00 per year in a full time capacity. The claimant was terminated for using an external hard drive (flash drive) in a secured government facility in violation of company and federal guidelines.

The claimant was on assignment with this employer at the Department of Defense (DOD) in a classified capacity which required security and background clearance. The employer and DOD have policies against using external hard drives in government computers and possession of them is also prohibited on DOD grounds. (See Emp. Ex. #1)

On April 3, 2013 the claimant was in the process of updating her resume for submission internally because she was recently promoted to her new position. She pulled out a personal flash drive from her purse which contained her most recent resume and put it into a port in her computer. A warning popped up and she instantly realized that she had made a mistake so she pulled the flash drive out of the computer.

Under the employer or client's policies the claimant had a duty to inform a supervisor of her infraction and she failed to do so. A computer audit turned up her flash drive usage and she was brought into an investigation interview the next day. She admitted making a mistake in using the flash drive but initially indicated that the drive was in her car. However, she had the drive in her purse and pulled it out during the interview and only said that it was in her car because she was nervous. The employer was forced to terminate her for using the flash drive in violation of the policy and the investigator noted that she "confessed" that the drive was in her purse which raised an allegation of dishonesty. (See Emp. Ex. #1)

## 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).

## EVALUATION OF EVIDENCE

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

The claimant clearly violated a known policy and also failed to notify a supervisor as required. However, this appears to be an isolated issue of poor judgment by the claimant. The employer's allegation that the claimant was dishonest was overcome by the claimant's credible testimony that she was nervous. She turned the flash drive over during her interview and there was no harm or damage done by her actions.

This type of behavior does not demonstrate an overall indifference to the employer's interests and was not a deliberate and willful disregard of the standards of behavior that the employer had a right to expect.

I hold that the claimant's actions do not show a regular and wanton disregard of her obligations to the employer and do not constitute gross misconduct in connection with the work. However, simple misconduct is supported by the evidence and an unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Employment Article, Section 8-1003 pursuant to this separation from employment.

### 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 March 31, 2013 and for the (nine) 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@dllr.state.md.us](mailto: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 Examiner is reversed.



P G Randazzo, 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. 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 June 17, 2013. 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: May 23, 2013

CH/Specialist ID: RBA91

Seq No: 001

Copies mailed on May 31, 2013 to:

TARA J. RICHARDS TALLIE

LANMARK TECHNOLOGY

LOCAL OFFICE #64