

**- DECISION -**

Claimant:	Decision No.:	3695-BR-11
EDWARD B KIRKPATRICK	Date:	July 8, 2011
	Appeal No.:	1102097
	S.S. No.:	
Employer:	L.O. No.:	65
URS CORPORATION	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).

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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 8, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board adopts the hearing examiner's findings of fact. However the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

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)*. 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).

In his appeal, the claimant restates much of his testimony from the hearing. He contends that the employer's practices were different than its official policies. The Board agrees and finds that the evidence supports the claimant's contentions.

The employer and claimant both testified that timesheets were submitted in the mornings on Fridays. Employees were to estimate their work time for that last day and correct the timesheet later if they worked different hours. The claimant properly submitted his timesheet in the morning, indicating his intention, at that time, to work until mid-afternoon. Later that day, the claimant decided to leave work early, believing that he could correct his timesheet later and properly report the hours he actually worked.

With respect to the notification to a supervisor, the Board finds this to be illogical and not the regular practice of the employer. The nature of the claimant's work would have required him to be notifying a supervisor every few hours that he was changing work locations. The claimant was in a position of responsibility and moved from one job site to another throughout his workday. The claimant probably should have advised the employer that he was leaving early that day. The Board finds that the claimant may have been slightly careless in this regard, but this was not an act of willful or deliberate misconduct.

The hearing examiner placed too much emphasis on the existence of the employer's policies and too little emphasis on the general workplace practices. Employer policies, alone, do not determine whether a claimant is discharged for gross misconduct or misconduct. Policies will help define what the employer expects and requires. But, it is the actions or omissions of a claimant which establish misconduct. Here, the claimant acted in a manner he reasonably believed was acceptable, based upon prior practice. The claimant exhibited no disregard for the employer's interests or expectations. The evidence will not support a finding that the claimant was discharged for any disqualifying reason.

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 has not met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The employer has also not met its burden of showing that the claimant's discharge was for misconduct within the meaning of § 8-1003. The decision shall be reversed for the reasons stated herein.

### DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment with URS CORPORATION.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

EDWARD B. KIRKPATRICK

URS CORPORATION

RANDY KLEINERT

URS CORPORATION AMERICAS

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

EDWARD B KIRKPATRICK

SSN #

**Claimant**

vs.

URS CORPORATION

**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: 1102097

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

February 11, 2011

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, RANDY KLEINERT, RHONDA TOMS, JEFFREY AMORIELLO

**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, Edward Kirkpatrick, was employed as a full time project field technician and senior bridge inspector for URS Corporation from July 29, 2010, until November 23, 2010. The claimant's wage at the time of separation from this employment was \$35.00 per hour. The claimant was discharged from this employment for falsification of time records and leaving the job site early without notifying the employer. The employer's policy, which the claimant had been issued and trained on at the time of hire, provides that employees must notify their supervisor when they leave the job site. This is particularly important as the employer must be able to verify the presence of all employees on a job site for safety reasons. The incident which led to the claimant's discharge occurred on Friday November 19, 2010. On the day in question, the claimant was scheduled to work until 3:00 or 3:30 p.m. The claimant submitted his timesheet at 5:44 a.m. indicating that he would be working 8 hours that day.

The claimant's understanding was that the timesheet was due by 10:00 a.m. on Friday and corrections could be made thereafter if needed. On the day in question, the claimant was scheduled to go out of town with his brother and wanted to leave early to "beat traffic." The claimant left the job site at noon. The claimant did not contact his supervisor as required to advise him that he had left the job site, nor did the claimant contact any member of management to advise them that his timesheet needed to be corrected. Sometime after 12:00 p.m., the employer's client, Cecil County, contacted the claimant's supervisor, Mr. Amoriello, to advise him that the claimant could not be found on site. The supervisor telephoned the claimant at which time the claimant admitted that he had left the job site at noon. The claimant did offer to come back to the job site, however the employer declined. The claimant was later discharged for this incident.

### 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).

### 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.

The credible testimony presented at the hearing indicates that the claimant was discharged from this employment for falsification of time records and leaving the job site early without notifying his supervisor. The claimant admitted that on the day in question, he was scheduled to work until approximately 3:00 p.m., but that he left the job site at noon. The claimant further admitted that he did not contact his supervisor to advise him of the early departure or the fact that his timesheet would need to be corrected. The claimant offered that he was unaware that the employer's policy required that he notify a supervisor prior to leaving a job site. The claimant acknowledged that the employer had given him a copy of their policies at the time of hire, but offered that he didn't read it. Based upon the employer's credible testimony that the claimant was provided a written copy of the policy and attended training on the policy, the claimant's alleged ignorance of the policy does not excuse his behavior. The claimant knew or should have known the employer's policy on this matter and chose to act in a manner which directly violated that policy.

Thus, 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 November 21, 2010, and until the claimant becomes reemployed and earns wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the Claims Specialist is reversed.



R M Liberatore, 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

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 February 28, 2011. 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: February 04, 2011  
BLP/Specialist ID: USB18  
Seq No: 001  
Copies mailed on February 11, 2011 to:

EDWARD B. KIRKPATRICK  
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RANDY KLEINERT