

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— D E C I S I O N —

Decision No.:	374 -SE-92
Date:	Feb. 25 , 1992
Claimant: Lisa Griffith	Appeal No.: 9109353
	S. S. No.:
Employer: State Employee Credit Union	L O. No.: 12
	Appellant: CLAIMANT

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 8-1002 or 8-1003 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 MAY BE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES

March 26, 1992

— A P P E A R A N C E S —

FOR THE CLAIMANT:

John H. Williams, Esq.
Lisa Griffith, Claimant

FOR THE EMPLOYER:

Sylvia Sutton,
Security Officer;
Diane Pusey, Branch
Manager;
Janet Struck, Human
Resources Admin.;
Connie Klaverweiden,
Assistant Manager

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evident presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The employer has not offered sufficiently specific testimony to prove that the claimant's actions were fraudulent. The employer has, however, provided sufficient evidence that the claimant knew, or should have known, that some of her transactions violated company policy.

With respect to the claimant's procedural objections, the Board notes that it did not receive a request to subpoena Mr. Nutter to the hearing before the Special Examiner. Even if it had received such a request, the Board would not have granted it. Mr. Nutter was present and subject to cross-examination at the original hearing before the Hearing Examiner on July 31, 1991. The claimant's attorney had prior notice of that hearing, as well as of his two simultaneous conflicting hearings in Circuit Court and District Court, but no timely request for a postponement was made in accordance with COMAR 24.02.06.02Q(1) and (2). The Board notes also that the July 31 hearing was in itself a postponed case, having been postponed from July 2, 1991 at the request of the claimant's attorney. "A repeated inability of a claimant's attorney or representative to appear on account of a conflicting trial date is not good cause." COMAR 24.02.06.02Q(3). The regulations reflect the Board's philosophy that the hearings are held for the benefit of the parties, not the attorneys. In any case, the second hearing was granted to give the claimant yet another chance to present her case, and that hearing was conducted in accordance with the regulations.

FINDINGS OF FACT

The claimant worked at the State Employees' Credit Union from May 9, 1988 to May 3, 1991 as a teller. She was earning \$7.96 an hour, and she was required to work thirty-five hours per week.

The claimant was discharged because she made deposits to her own account, using her own teller machine. She was also suspected of improprieties regarding fraudulent activity on other Member accounts.

The claimant knew, or should have known, of the employer's policy that all personal transactions must be done by another teller, and that these transactions should not be entered into the employer's computer system by the claimant. She did not have a reasonable belief that it was all right to violate this policy.

On January 4, 1990, April 21, 1990, and on four occasions between March 4, 1991 through March 22, 1991, the claimant entered her own deposits into the employer's computer system herself, violating the employer's policy.

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, on the employer's premises.

In this case, the claimant's discharge, for making deposits to her own account through her own teller machine, clearly falls within the above definition of misconduct connected with the work, within the meaning of the Labor and Employment Article, Section 8-1003. She knew, or should have known, that she was repeatedly violating the employer's written policy on a matter of obvious importance to the security of her employer's operations. The claimant's repeated violations raise the issue of whether the claimant's conduct was "gross misconduct" within the meaning of Section 8-1002(a)(2), but the employer has not proven that the claimant's actions were "wanton," within the meaning of that section.

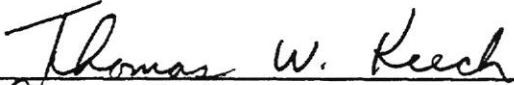
On the other hand, the claimant's misconduct would not be mitigated by the alleged fact that others also committed misconduct.

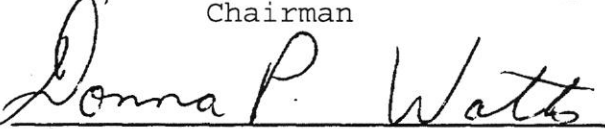
DECISION

The claimant was discharged for misconduct, connected with her work, within the meaning of Section 8-1003 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning April 28, 1991 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

The claimant may now consult her local office with regard to the other eligibility requirements of the law. This disqualification may also result in a disqualification from any federal extended benefits.


Chairman


Associate Member

K:DW

kbm

Date of Special Examiner Hearing: December 2, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John H. Williams, Esq.

Robert L. Nutter, Manager

UNEMPLOYMENT INSURANCE - SALISBURY

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	Lisa A. Griffith	Date:	Mailed 8/7/91
		Appeal No.:	9109353
		S. S. No.:	
Employer:	State Employee Credit Union	L.O. No.:	12
		Appellant:	Employer

Issue: Whether the claimant was discharged for mist.miluct connected with the work, within the meaning of Section 6 (c) of the Law. Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06. 02(N) .

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT OR WITH THE APPEALS DIVISION, ROOM 515, 1103 NORTH EUTAW STREET, BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL

8/22/91

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present
John H. William, Esq.

FOR THE EMPLOYER:

Robert L. Nutter
Manager, Human
Resources
Curtis B. Pusey
AEP

For good cause shown, the employer's appeal heretofore dismissed is hereby reopened. An administrative officer had granted a postponement to the claimant and inadvertently the appeal was dismissed.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Salisbury, effective May 5, 1991.

The claimant had been employed by the State Employees Credit Union of Maryland, Inc. for a period of three years. The claimant's last position was a teller at a pay rate of \$7.90 per hour.

The claimant violated certain rules of the organization with respect to personal transactions entered by herself on her own teller machine.

The matter had come to light when the employer received information from a customer that there were certain improprieties with his bank statement. An investigation into that matter then lead the employer to find that the claimant had repeatedly transacted her own personal business on her own teller machine which was a violation of the employer's rules.

The claimant alleges that such was common practice in the bank, for each teller to conduct personal business on his or her own teller machine. The employer alleges that common sense would dictate otherwise.

Other allegations by the employer suggesting additional improprieties or wrongdoings on the part of the claimant which is being investigated by the FBI is unsubstantiated in any form and is not credible evidence.

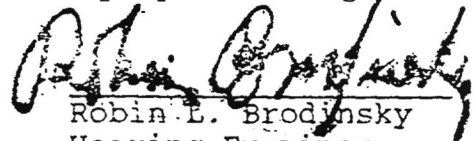
CONCLUSIONS OF LAW

The claimant admits that she entered certain business transactions on her own teller machine, but she further asserts that she did not know that this violated the rules, and that such was a common practice in the Salisbury office. The employer's representative rests upon the rules of the organization which have been in effect for a number of years, which prohibits any teller from conducting personal business on his or her own teller machine, and that such personal business must be entered by another teller, thereby requiring the use of a different teller machine. The claimant has failed to produce evidence to corroborate her position that the practice of tellers entering their own personal business transactions was in any way condoned by management, or was commonly accepted and an approved practice in the Salisbury office. Accordingly, I have no alternative but to conclude that the claimant's conduct of entering her own

business transactions on her own teller machine was a deliberate and willful disregard of the standards of behavior which the employer had a reasonable right to expect, showing gross indifference to the employer's interest. By this definition, the claimant has demonstrated conduct which constitutes "gross misconduct connected with the work," within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, for which only the maximum mandatory disqualification may be entered.

DECISION

The claimant was discharged for gross -misconduct connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied from the week beginning April 28, 1991, and until the claimant becomes reemployed, and earns at least ten times her weekly benefit amount (\$1,880) and thereafter becomes unemployed through no fault of her own.


Robin E. Brodinsky
Hearing Examiner

Date of hearing: 7/31/91
ah/Cassette: 7589 A&B
Specialist ID: 12627
Copies mailed on 8/7/91 to:

Claimant
Employer
Unemployment Insurance - Salisbury NABS

Robert L. Nutter

John H. Williams