

***-DECISION-***

Claimant:  
WILLIAM M BLAIR

Decision No.: 3836-BH-12

Date: August 08, 2012

Appeal No.: 1017160

Employer:  
COMPLETE CONFIDENTIAL  
INVESTIGATIVE SVCS INC

S.S. No.:

L.O. No.: 61

Appellant: CLAIMANT - REMAND FROM  
COURT

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: September 07, 2012

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**- APPEARANCES -**

FOR THE CLAIMANT:

WILLIAM M. BLAIR  
WORTHAM D. DAVENPORT, Esq.  
MICHELE BLAIR

FOR THE EMPLOYER:

J. PETER HAUKEBO, Esq.  
WILLIAM FAIRALL, President

**PRELIMINARY STATEMENT**

This matter came before the Board of Appeals (the Board) pursuant to an Order of Court from the Circuit Court for Prince George's County. The Circuit Court remanded this matter to the Board for a hearing

pursuant to §8-5A-10 of the Labor and Employment Article of the Maryland Code and Regulation 09.32.06.03(H) of the Code of Maryland Regulations.

The Board scheduled this matter for a continued hearing on June 26, 2012. The employer and the claimant appeared. Both parties were given the opportunity to present any additional evidence they wished the Board to consider in this matter. No additional testimony or documents were entered into the record.

The Board issues the following decision based solely upon the evidence presented at the hearing before Hearing Examiner C.S. Spencer on May 20, 2010.

### **EVALUATION OF THE EVIDENCE**

The Board of Appeals has considered all of the evidence presented. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file. The Board finds the testimony of the employer's witness to be more credible than that of the claimant.

### **FINDINGS OF FACT**

The employer provides security services on a contractual basis to various clients.

The claimant was employed as a private investigator and security officer from February 1, 2009 until March 22, 2010. The claimant became separated from this employment as a result of a discharge.

During his employment the claimant continually failed to complete necessary paperwork in a timely manner. The claimant failed to submit reports regarding the start and end times of his assignments, failed to submit log sheets, and failed to submit his time sheets in a timely manner. The claimant had a history of reporting late to assignments without notification to the employer. The claimant was warned with regard to the areas of his job performance that he needed to improve, however he failed to do so.

The event that led to the claimant's discharge occurred on March 20, 2010. The claimant was scheduled to report to provide security to a client of the employer at 9:00 p.m. on the evening of March 20, 2010. At 7:48 p.m. the claimant called his supervisor and left a message that he needed to talk to him. The claimant did not include in his message that he was sick or that he would not be able to report to his assigned job location that evening. When the claimant's supervisor attempted to return the claimant's call at 9:04 p.m., the supervisor only got the claimant's voice mail. The claimant's supervisor left the claimant a message directing him to return his call. The claimant failed to do so. The employer's client went without security on the evening of March 20, 2010.

The claimant was discharged on March 22, 2010.

### CONCLUSIONS 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 09.32.06.02(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).

The credible evidence established that the claimant's final absence, without proper notification, was the precipitating factor in the employer's decision to discharge him. The claimant knew or should have known that it was necessary to inform his employer that he was not going to report for work on the evening of March 20, 2010. The claimant's failure to do so left the employer's client without security that evening. As a security officer the claimant had a heightened duty to either appear at his assigned job location in a timely manner or if he was going to be late or not report to ensure that the employer was timely advised. The claimant could just as easily left a message for his employer that he would not be reporting for work as he left a message saying he "needed to talk" to him. The claimant's failure to inform his employer that he was not reporting for work on the evening of March 20, 2010 was a deliberate and willful disregard of standards the an employer has a right to expect and showed gross indifference to the employer's interest.

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 met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The decision shall be reversed for the reasons stated herein.

**DECISION**

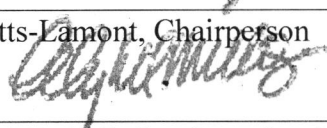
It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning February 14, 2012 and until the claimant becomes re-employed, earns at least twenty times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



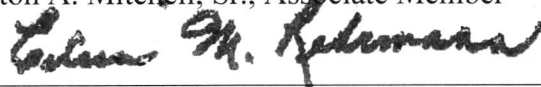
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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member



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Eileen M. Rehrmann, Associate Member

RD

Date of hearing: June 26, 2012

Copies mailed to:

WILLIAM M. BLAIR  
COMPLETE CONFIDENTIAL  
WORTHAM D. DAVENPORT ESQ.  
CCI SERVICES INC  
PAMELA R. CHANEY & ASSOCIATES P.C.  
J. PETER HAUKEBO SR. ASSOCIATE ATTY.  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

WILLIAM M BLAIR

SSN #

**Claimant**

vs.

COMPLETE CONFIDENTIAL  
INVESTIGATIVE SVCS 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: 1017160  
Appellant: Claimant  
Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

May 27, 2010

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , WILLIAM FAIRALL

**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 began working for this employer on or about February 1, 2009. At the time of separation, the claimant was working as a private investigator and security officer. The claimant last worked for the employer on or about March 22, 2010, before being terminated for poor work performance.

The claimant, in addition to his investigative and security duties, was also responsible for several administrative tasks. The claimant, on several occasions, was not as proficient with his administrative duties. For example, the employer's work required the obtaining and proper filing of affidavits. The claimant, though trained in the proper procedure, struggled with the task. The claimant, though warned on many occasions, also did not submit his timesheet in a timely fashion. The claimant, while working to the

best of his ability and knowledge, was never able to perform the duties of the job to the standards expected by the employer.

### 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).

In Todd v. Harkless Construction, Inc., 714-BR-89, the Board of Appeals held "A mere showing of substandard performance is not sufficient to prove gross misconduct or misconduct."

### 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 not been met.

As in Todd, *supra*, while the employer may have shown poor work performance or mistakes on the part of the claimant due to his inability to perform certain assigned tasks, such evidence is not sufficient to establish that the claimant committed misconduct.

Accordingly, I hold that the claimant did not commit a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engage in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises. No unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.



## DECISION

IT IS HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. No disqualification is imposed based upon the claimant's separation from employment with the above-identified employer. The claimant is 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 Specialist is reversed.



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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 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 June 11, 2010. 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 20,2010

CH/Specialist ID: WCP6E

Seq No: 002

Copies mailed on May 27, 2010 to:

WILLIAM M. BLAIR

COMPLETE CONFIDENTIAL

LOCAL OFFICE #61

CCI SERVICES INC