

- DECISION -

Claimant:
LISA PHILLIPS

Decision No.: 545-BR-01

Date: March 09, 2001

Appeal No.: 0018241

S.S. No.:

Employer:
COMMUNITY SERVICES OF MD INC

L.O. No.: 02

Appellant: Claimant

Issue: Whether the claimant was discharged for aggravated misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1002.1.

- 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: April 08, 2001

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact and conclusions of law of the Hearing Examiner. Although the facts in this case show that the claimant misappropriated funds, the Board notes that it did not rise to the level of aggravated misconduct within the meaning of Section 8-1002.1. While the facts of this case support a finding that the "claimant's mismanagement of client funds" was a breach of duty and a regular and wanton disregard of the standard of behavior her employer had the right to expect, her mismanagement lacks the requisite element of "actual malice" to rise to the level of aggravated misconduct.

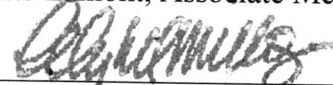
DECISION

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. She is disqualified from receiving benefits from the week beginning July 23, 2000 and until she becomes re-employed, earns at least twenty times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:
LISA PHILLIPS
COMMUNITY SERVICES OF MD INC
LOCAL OFFICE #02
Michael Taylor, Legal Counsel OUI

UNEMPLOYMENT INSURANCE APPEALS DECISION

LISA PHILLIPS

SSN #

Claimant

vs.

COMMUNITY SERVICES OF MD 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: 0018241

Appellant: Employer

Local Office : 02 / Glen Burnie

January 10, 2001

For the Claimant : PRESENT

For the Employer : PRESENT , HELENE HEADRICK

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 employer operates residential group homes for disabled adults. The claimant was employed with the above-captioned employer from March 7, 2000 through July 26, 2000 as a full-time Residential Program Manager earning \$14.75 per hour.

The claimant was discharged for misappropriating approximately \$2,800. The claimant was responsible for the daily operation of eight group homes. The claimant was responsible for approximately 32 clients and had a staff of approximately 40 individuals.

The claimant was issued a budget for each client and a budget for each group home. The claimant intermingled client funds. On six occurrences, the claimant purchased items for clients in a particular group home with the funds allocated for clients in another group home. The claimant contends that because of her position and authority she had the authority to make any needed purchase for clients.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 (Supp. 1996) 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 8-1002 (Supp. 1996) provides that an individual shall be disqualified from receiving benefits when he or she was discharged or suspended from employment because of behavior that demonstrates gross misconduct. The statute defines gross misconduct as repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

Md. Code Ann., Labor & Emp. Article, Section 8-1003 (Supp. 1996) 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, 314 A.2d 113 (1974).

EVALUATION OF EVIDENCE

It is undisputed that the claimant was discharged. In a discharge case, the employer bears the burden of proving by a preponderance of the evidence that the claimant's separation constitutes some degree of misconduct.

There is insufficient evidence to establish that the claimant misappropriated funds from this employer. However, there is sufficient evidence to establish that the claimant mismanaged funds under her direction and control. The claimant argues that she had the discretion and authority to allocate resources. This is not supported by the credible evidence. The claimant did not provide documentation to support this allegation.

The claimant's mismanagement of client funds constitutes a serious breach of duty. The six occurrences demonstrate a regular and wanton disregard of the employer's interest. Therefore, a finding of gross misconduct is warranted.

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)(ii) (Supp. 1996). The claimant is disqualified from receiving benefits from the week beginning July 23, 2000 and until the claimant becomes re-employed and earns wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the Claim Specialist is reversed.

C Edmonds, 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 410-949-0022 or 1-800-827-4839. 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.

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by January 25, 2001.

Note: Appeals filed by mail are considered timely on the date of the U. S. Postal Service postmark.

Date of hearing : January 02,2001

THJ/Specialist ID: RGB24

Seq No: 001

Copies mailed on January 10, 2001 to:

LISA PHILLIPS
COMMUNITY SERVICES OF MD INC
LOCAL OFFICE #02