Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5032

— DECISION —

Decision No.: 588-BR-92

Date: March 27, 1992

Claimant: Jenneh B. Borbor

Appeal No.: 9118496

S. S. No.:

Employer: L & B Corporation
ATTN: Jeffrey Lake, Mgr.

L. O. No.: 43

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 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 MAYBE 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 April 26, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

The Board disagrees with some of the conclusions of law of the Hearing Examiner. The Board's conclusion is that the claimant's tardiness was excessive and did continue in the face of warnings. Verbal "reminders" given on each occasion of lateness are the equivalent of warnings. For these reasons, the Board will impose a more severe penalty.

On the other hand, the Board does agree that the misconduct does not meet the definition of "gross misconduct," since it does not show a wanton disregard of the claimant's obligations.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning September 15, 1991 and the nine weeks immediately following.

The decision of the Hearing Examiner is modified.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:D
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

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—

Date: Mailed: 01/30/92

Claimant: Jenneh B. Borbor

Appeal No.: 9118496

S. S. No.:

Employer: L & B Corporation

LO. No.: 43

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1002.
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, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON February 14, 1992

—APPEARANCES—

FOR THE CLAIMANT:

Claimant - Present
John Fesay, Witness

FOR THE EMPLOYER:

Represented by:
Jeffrey Lake,
Manager

FINDINGS OF FACT

The claimant was employed by the L & B Corporation on June 5. 1991. At the time of his separation from employment on September 26, 1991, he earned $7.75 an hour as a presser.

When the claimant was hired, the employer had a lenient attendance policy. The claimant was allowed to report to work between 7:00 a.m. and 7:30 a.m., which he did. In early September, the employer told the claimant that he needed her to arrive at 7:00 a.m. when the store opens because another employee had quit. The claimant stated that she did not think that she would be able to arrive at exactly 7:00 a.m. because she had to drop her child off at school, but she would try. Afterwards, the claimant reported to work at 7:00 a.m. on some occasions and on others was 15 to 20 minutes late. The claimant received no written warnings from the employer but was reminded on each occurrence of lateness she was expected to report to work at 7:00 a.m.

On the claimant's last day of work, she was 15 minutes late because she was caught in traffic behind an accident that occurred on Route 29. When the claimant arrived at work, she was told that she was discharged.

A hearing was scheduled in this case on November 12, 1991 and was dismissed because the claimant failed to appear.

The claimant failed to appear for the hearing because she received the hearing notice one day after the date that the hearing was scheduled.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1)(i), (ii) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. In this case, the employer has failed to prove that the claimant's tardiness rose to the level of gross misconduct. The employer had allowed a lenient lateness policy before asking the claimant to report to work at 7:00 a.m. Further, the employer has failed to prove that the claimant's tardiness was excessive and continued in the face of warnings. For this reason, it is concluded that the claimant was discharged for reasons that do not rise to the level of gross misconduct.

It has been held that as a condition of employment, an employer has the right to expect his workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable

detainment or emergency, to receive prompt notification thereof. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). Failure to meet this standard amounts to misconduct within the Maryland Code, Labor and Employment Article, Title 8, Section 1003 (a)(b).

In this case, the claimant's tardiness constitutes simple misconduct warranting a mitigated penalty.

COMAR 24.02.06.02(N) provides that a dismissed case may be reopened upon showing good cause by the appellant. The claimant in this case has demonstrated good cause for reopening.

DECISION

The claimant was not discharged for gross misconduct connected with her work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003. Benefits are denied for week beginning September 15, 1991 and the four weeks immediately following.

The Claims Examiner's determination is reversed.

There is good cause to reopen this dismissed case pursuant to COMAR 24.02.06.02(N).

Sarah L. Moreland
Hearing Examiner

Date of Hearing: 1/22/92
cc/Specialist ID: 43725
Cassette Attached
Copies mailed on 01/30/92 to:

Claimant
Employer
Unemployment Insurance - Wheaton (MABS)