

**- DECISION -**

Claimant: VANESSA MOLINA MARSHALL	Decision No.: 5969-BR-12
	Date: December 17, 2012
	Appeal No.: 1203855
	S.S. No.:
Employer: CRAWFORD CONSULTING & MENTAL HEALTH SERVICES INC	L.O. No.: 61
	Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

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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: January 16, 2013

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**REVIEW OF THE RECORD**

After a review of the record, and after deleting the third and fifth paragraphs, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

The claimant and employer entered into an agreement that the claimant would provide therapeutic counseling services for clients of the employer for a period of one year. The claimant was paid only for the hours she actually conducted sessions with clients. Near the end of the one-year period, the claimant advised the employer that she was concluding her work with her last two clients. Due to a rescheduled appointment with her last client, the claimant did not actually finish her work with this employer until December 18, 2011.

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*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged. For the following reasons, the Board reverses the hearing examiner's decision on this issue. This employment was for a term-certain. Both the claimant and the employer entered into an agreement whereby the claimant would provide services to the employer for one year and be compensated for the sessions she actually conducted. The claimant worked slightly more than one year in order to accommodate the needs of her last client.

When a separation occurs because of the terms of the agreement between the parties, it is generally considered analogous to a lay-off for a lack of work. A lay-off is a discharge for non-disqualifying reasons. The Board is of the opinion that the claimant's employment with this employer ended of its own terms and was a discharge. Even if this were considered to be a voluntary quit, the Board would find that the cessation of the employment agreement constituted good cause for the claimant to leave her position with this employer.

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 her appeal, the claimant reiterates her testimony from the hearing. The Board has conducted a thorough review of the evidence of record from the Lower Appeals Division hearing. The Board finds that the claimant's discharge occurred under non-disqualifying conditions. A lay-off, due to a lack of work, occurs not because of some act or omission by the claimant, but because the employer does not have work for the claimant. Such a separation is non-disqualifying.

The Board notes that there was substantial discussion as to the question of whether the claimant was an employee or an independent contractor. That issue was not before the hearing examiner and is not before the Board. That issue must be decided by the Employer Tax Unit, which will issue a determination of liability. Once that has occurred, the employer may, if it disagrees, file an appeal to the Board for a hearing on that issue.

The resolution of this matter does not impact upon the issue of employment. Similarly, the resolution of this matter does not act as collateral estoppel on questions related to the nature of the relationship between the parties. This matter only affects the claimant's ability to receive benefits based upon the reason for her separation. If the claimant is later found to be an independent contractor, this decision will be vacated.

The Board also 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

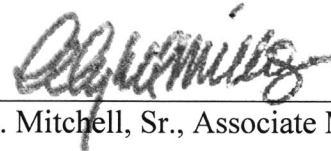
It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment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

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

RD

Copies mailed to:

VANESSA MOLINA MARSHALL  
CRAWFORD CONSULTING & MENTAL  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE REMAND APPEALS DECISION**

VANESSA MOLINA MARSHALL

SSN #

**Claimant**

vs.

CRAWFORD CONSULTING & MENTAL  
HEALTH SERVICES 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: 1203855  
Appellant: Employer  
Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

September 20, 2012

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , PATRICK CRAWFORD

**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 1001 (Voluntary Quit for good cause), 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), or 1003 (Misconduct connected with the work).

**PREAMBLE**

The case of Vanessa Molina Marshall v. Crawford Consulting & Mental Health Services, Inc. was appealed to the Board of Appeals, pursuant to which the Board decided to remand the case to the Lower Appeals Division for a de novo hearing and decision.

**FINDINGS OF FACT**

The claimant, Vanessa Molina Marshall, began working for Crawford Consulting and Mental Health Services on December 2010. At the time of separation, the claimant was working as a mental health

counselor. The claimant last worked for Crawford Consulting and Mental Health Services Inc., on December 18, 2011, before quitting under the following circumstances: she quit for personal reasons.

The claimant had been employed at Center for Adoption and Education Support from 2007 to November 23, 2011, as a full time adoption therapist.

There was continuing work at Crawford Consulting and Mental Health Services Inc.

The claimant worked part time at Crawford Consulting and Mental Health Services on Monday from 6 p. m. to 9 p.m. Tuesday through Thursday from 9 a. m. to 1 p. m

Crawford Consulting and Mental Health Services argued that claimant was an independent contractor and not an employee.

On January 29, 2011, the claimant signed a contract with Crawford Consulting and Mental Health Services Inc. which indicated that she a subcontractor.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning...; it expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." 275 Md. at 79.

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual shall be disqualified for benefits where unemployment is due to leaving work voluntarily without good cause arising from or connected with the conditions of employment or actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

### **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 claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit her position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has not been met.

The claimant quit at Crawford Consulting and Mental Health Services for personal reasons constitutes a

voluntary quit without good cause under section 8-1001 of the law.

It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate valid circumstances within the meaning of the sections of law cited above

The disqualifications under section 8-1001 through 8-1003 are based on the reason for the claimant's present state of unemployment. In every case the reason the claimant left his or her last employment, covered or non-covered, is certainly relevant to the reason the claimant is unemployed. *Yasin v. Gremler Realty, Inc.*, 273-BR-82.

Upon the assessment of the demeanor and credibility of all witnesses who participated in hearing and totality of evidence presented at said hearing, it is determined that claimant voluntarily quit without good cause under section 8-1001 of the law.

### **DECISION**

[NO GC OR VC] IT IS FURTHER HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning December 18, 2011, and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of Claims Specialist is affirmed.

The issue claimant being an independent contractor under section 8-205 of the law is referred to the Call Center for their determination. .



MI Pazornick, 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 October 05, 2012. 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: September 10, 2012  
DAH/Specialist ID: WCP2D  
Seq No: 003  
Copies mailed on September 20, 2012 to:  
VANESSA MOLINA MARSHALL  
CRAWFORD CONSULTING & MENTAL  
LOCAL OFFICE #61