-DECISION-

Claimant:
SHARMAINE L LEGINS

Employer:
BALTIMORE BEHAVIORAL HEALTH INC

Decision No.: 5993-BR-12

Date: December 13, 2012

Appeal No.: 1012385

S.S. No.:

L.O. No.: 64

Appellant: CLAIMANT - REMAND FROM COURT

Issue: 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).

- 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 14, 2013

PROCEDURAL HISTORY

A Benefit Determination was issued on March 12, 2010 finding that the claimant, Sharmaine L. Legins was discharged on February 19, 2010 for gross misconduct under *Md. Code Ann., Lab. & Empl. Art., §8-1002*. The claimant was disqualified from receiving unemployment insurance benefits.

The claimant timely appealed the benefit determination to the Lower Appeals Division. On April 30, 2010 Chief Hearing Examiner Judy Smylie entered a Dismissal of the claimant's appeal because the

claimant failed to appear at her Lower Appeals Division hearing. The claimant filed a late request to reopen her appeal, at which time the Lower Appeals Division denied the reopening on May 26, 2010.

The claimant filed a timely appeal to the Board of Appeals (Board). The Board found good cause for the claimant's failure to appear and remanded the matter to the Lower Appeals Division for a *de novo* hearing. The hearing was held on November 16, 2010. A decision, dated December 7, 2010 was issued affirming the March 12, 2010 benefit determination.

The claimant filed a timely Petition to Reopen the Appeal. The Board denied that Petition on March 2, 2011.

On March 30, 2011, the claimant filed a timely Petition for Judicial Review in the Circuit Court for Baltimore City.

On September 26, 2011, the Circuit Court for Baltimore City affirmed the Board's decision.

The claimant timely filed an appeal with the Maryland Court of Special Appeals.

Pursuant to a Settlement Agreement between the claimant and the Board, the Board accepted a remand of the matter for a decision limited to whether the claimant was discharged for reasons amounting to misconduct under *Md. Code Ann., Lab. & Empl. Art., §8-1003.*

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but reaches a different conclusion of law. The Board makes the following additional findings of fact and finds that the claimant was discharged for the single incident of failing to supervise a patient under her care.

> There were several other employees present in a large room attending to and supervising patients at the employer's facility. The claimant was not the only individual in charge of supervising patients.
>
> When the claimant arrived at the facility in time for her shift, she was told by her supervising nurse that one of her patients had been in possession of a bottle of alcohol. At that time, the claimant believed that the patient had been searched, as was the employer's policy and protocol.
>
> A short time later, the claimant observed that the same patient had a bottle of alcohol. As instructed and consistently practiced by the claimant, she retrieved the alcohol, presented it to her supervising nurse, at which time that nurse wrote something down. The claimant then returned to her duties. A short time after that, the patient fell, but was caught by another employee prior to hitting the floor.
>
> The claimant was discharged for this single incident. The claimant had never received any prior written reprimands or written violation reports from the employer during her employment.

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).*

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); also see Johns Hopkins University v. Board of Labor, Licensing and Regulation, 134 Md. App. 653, 662-63 (2000)*(psychiatric condition which prevented claimant from conforming his/her conduct to accepted norms did not except that conduct from the category of misconduct under *§8-1003*). 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 employer did not sufficiently demonstrate that the claimant's actions were more than a mere isolated incident. *See Proctor v. Atlas Pontiac, 144-BR-87* (An instantaneous lapse in the performance of job duties does not constitute misconduct); *also see Gilbert v. Polo Grill, 192-BH-91* (One slight lapse in the claimant's performance is insufficient to support a finding of misconduct). In the light most favorable to the employer, the claimant failed to use good judgment by not notifying the employer of his physical condition and requesting a replacement. Failing to use good judgment, or an isolated case of ordinary negligence, in the absence of a showing of culpable negligence or deliberate action in disregard of the employer's interests in insufficient to prove misconduct. *Hider v. DLLR, 115 Md. App. 258, 281 (1997); Greenwood v. Royal Crown Bottling Company, 793-BR-88.*

Although the hearing examiner may rely on hearsay evidence in making his determination, the hearing examiner must, "first carefully consider[] its reliability and probative value." *Travers v. Baltimore Police Dept., 115 Md. App. 395, 413 (1997).* "The Court has remained steadfast in reminding agencies that to be admissible in an adjudicatory proceeding, hearsay evidence must demonstrate sufficient reliability and probative value to satisfy the requirements of procedural due process." *Id. at 411. See also Kade v. Charles H. Hickey School, 80 Md. App. 721, 725 (1989)* ("[e]ven though hearsay is admissible, there are limits on its use. The hearsay must be competent and have probative force.").

One important consideration for a hearing body is the nature of the hearsay evidence. For instance, statements that are sworn under oath, see *Kade, 80 Md. App. at 726, 566 A.2d at 151, Eichberg v. Maryland Bd. of Pharmacy, 50 Md. App. 189, 194, 436 A.2d 525, 529*, or made close in time to the incident, see *Richardson v. Perales, 402 U.S. 389, 402, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1971)*, or corroborated, see *Consolidated Edison v. N.L.R.B, 305 U.S. 197, 230, 83 L. Ed. 126, 59 S. Ct. 206 (1938)* ("mere uncorroborated hearsay or rumor does not constitute substantial evidence"); *Wallace v. District of Columbia Unemployment Compensation Bd., 294 A.2d 177, 179 (D.C. 1972)*, ordinarily is presumed to posses a greater caliber of reliability. *Cited in Travers 115 Md. App. at 413. Also see Parham v. Dep't of Labor, Licensing & Reg[ulation], 985 A.2d 147, 155 (Md. Ct. Spec. App. 2009). Also see Cook v. National Aquarium in Baltimore, 1034-BR-91*(the employer offered not a single specific example of the alleged misconduct as observed by either of the employer's witnesses and no documents were introduced

relating to any specific instance of misconduct. The employer offered only conclusory statements that the claimant engaged in a certain type of misconduct).

The hearing examiner made no such examination into the reliability of the hearsay evidence in his evaluation of the evidence in this case. As the Court of Appeals has noted, for a reviewing court to perform properly its examination function, an administrative decision must contain factual findings on all the material issues of a case and a clear, explicit statement of the agency's rationale. *Harford County v. Preston, 322 Md. 493, 505, 588 A.2d 772, 778 (1991).* A fully explained administrative decision also fulfills another purpose; it recognizes the "fundamental right of a party to a proceeding before an administrative agency to be apprised of the facts relied upon by the agency in reaching its decision . . . ." *Id.*; *also see Mehrling v. Nationwide Ins. Co., 371 Md. 40, 56 (2002)*; *Fowler v. Motor Vehicle Administration, 394 Md. 331, 353 (2006)*; *Crumlish v. Insurance Commissioner, 70 Md. App. 182, 187 (1987).*

In *Kade v. Charles H. Hickey School,* the Court of Special Appeals reversed a decision by an administrative agency for similarly relying on hearsay evidence without establishing the reliability of that evidence. In *Kade*, a school employee appealed his suspension by his employer for disrespectful conduct towards a fellow employee. At the hearing before the administrative agency, the superintendent of the school was the only witness for the employer. The superintendent testified that he was not present on the night of the incident and that all of the information he possessed was based on statements given to him. The Court found the agency's reliance on the hearsay statements submitted by the superintendent to be improper.

> Even though the statements were relevant, *there was no indication that this hearsay evidence was reliable, credible or competent.* The statements which were submitted by appellant's co workers are not under oath and do not reflect how they were obtained.... No reason was given as to why the declarants were unavailable.

In the instant case, the only witness in attendance for the employer was Monica Bonds, the Director of Human Resources. Ms. Bonds had no first hand knowledge of the incident that led to the claimant's discharge. Ms. Bonds offered testimony that she reviewed the "video surveillance" recording of the incident, but she failed to provide a copy of such as evidence in the hearing. Thus, the testimony she provided was merely her "observation" of what transpired on the video surveillance of the incident that led up to the claimant's dismissal. The best evidence would have been a copy of the recording.

Finally, there were several individuals present during the patient's fall; no witness was presented to offer their first hand recollection of the incident nor were written statements presented by the employer to corroborate the employer's interpretation of the events.

The Court's rejection of the administrative agency's use of hearsay evidence in *Kade* applies with equal force to the hearing examiner and the Board in this case.

The hearing examiner bases his credibility determination on what he perceives as conflicting statements. The hearing examiner's credibility determinations are not demeanor-based.

Because the hearing examiner's credibility determinations were not demeanor-based, the Board does not owe the hearing examiner "special deference" as to his findings in this regard. *See Dept. of Health and Mental Hygiene v. Shrieves, 100 Md. App. 283, 299 (1994).* The Court of Appeals distinguishes between: (1) testimonial inferences, "credibility determinations based on demeanor," and (2) derivative inferences, "inferences drawn from the evidence itself." *Shrieves, 100 Md. App. at 299* (citations omitted). The Court explained:

> Weight is given the administrative law judge's determinations of credibility for the obvious reason that he or she "sees the witnesses and hears them testify, while the Board and the reviewing court look only at the cold records."....But it should be noted that the administrative law judge's opportunity to observe the witnesses' demeanor does not, by itself, require deference with regard to his or her derivative inferences. Observation makes weighty only the observers testimonial inferences.

Shrieves, 100 Md. App. at 299-300.

The hearing examiner derived his credibility determinations in this regard from what he perceived as conflicting evidence in the record:

> The claimant asserted at the hearing she was unaware of the resident/patient falling and properly reported the possession of alcohol to the charge nurse. The undersigned Hearing Examiner finds that the claimant's statements at the hearing on this matter to not be credible. The claimant's contemporaneous, written statement (see ER EX #1, Page 3) contains no such denial or defenses. This inconsistency leads the undersigned to place more credence in the employer's incident contemporaneous documentation, than the later, self-serving testimony.

The Board does not adopt the hearing examiner's credibility determinations regarding the employer's witness.

The Board wholly rejects the hearing examiner's statement that the claimant's statements were inconsistent with the claimant's written response to her supervisor's written violation report. *(Emp. Exhibit #1).* The claimant wrote "I seem to have bad day that day. I will make sure of overseeing ASU is done right." This statement is not an admission by the claimant that she agrees with the substance of the report, only that she may have been having a bad day and that she will dispose of her duties correctly in the future.

The claimant was responsible for supervising a group of patients. The claimant arrived to her shift and the patients had already been assembled in the large room. The claimant was not the only employee with this responsibility. The patients would be "signed" over to the claimant by a nurse[1]. If anything happens while the claimant was in charge of the patients, the claimant would report to this supervising nurse.

---

[1] There are several different levels of nurses in the employer's facility. It appears that the claimant's direct supervisor, who she reported to was a "CNA" which is a Certified Nursing Assistant. However, a "charge" nurse is the supervisor of the CNA as well as the claimant, who was a Shelter Supervisor/Monitor. The claimant consistently reported all incidents to the CNA who would then either document the incident or report it to the charge nurse.

After the claimant was charged with supervising her three patients, she discovered that one of the patients had a bottle of alcohol. She took the bottle to her supervisor, who nodded to the claimant and wrote something down. The claimant then disposed of the bottle of alcohol. It was apparent to the claimant that the patient was intoxicated and that he had not been properly searched prior to entering the facility.

While the claimant was at her station, there were other individuals in the group room doing work therapy. These individuals were supervised by two work therapists. The claimant was unaware that a patient had fallen. Other individuals responded to the fall and, in fact, caught the patient prior to him hitting the floor. It is not unusual for a patient to fall in the facility.

It was the claimant's understanding from the repeated practice of her supervising nurses that she was not responsible for documenting incidents for the facility. The claimant was only responsible for supervising the patients and reporting incidents to her supervisors who were then charged with documenting the incidents.

The claimant was discharged for this one time incident. She had never been reprimanded or warned for any violations previous to this incident. There was no evidence presented by the employer that the claimant had anything but a stellar work record since the start of her employment in 2007.

The employer submitted several documents listing the claimant's written job description as well as policies relating to environment of care and searching a patient. The claimant credibly testified that she followed these policies and procedures as instructed by her immediate supervisor. It appears that the actual practice by the supervisors, nurses and other employees were in slight conflict with the employer's written policies.

Because a supervising nurse informed the claimant that she retrieved an alcohol bottle from the patient that fell, the claimant assumed that the patient had already been searched. The patient was already in the facility when the claimant arrived for her shift. When she informed the nurse that the patient had another bottle of alcohol, she observed the nurse write something down. The claimant performed her duties as required. The only thing the claimant did not do was assist the patient when he fell. However, another employee had already assisted the patient.

It is apparent that the claimant did not follow the letter of the employer's written policies. However, failure to do so, given the facts and circumstances surrounding this incident, does not rise to the level of misconduct. It is also apparent that there were many other individuals who were assisting with the patient at the time of his intake and the time of his fall.

The Board finds that this single isolated incident of failing to adequately supervise a patient who subsequently fell does not rise to the level of misconduct.

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 not met its burden of demonstrating that the claimant's actions rose to the level of 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 BALTIMORE BEHAVIORAL HEALTH, INC.

The Hearing Examiner's decision is reversed.

Clayton A. Mitchell, Sr., Associate Member

Donna Watts-Lamont, Chairperson

RD/mr
Copies mailed to:
SHARMAINE L. LEGINS
BALTIMORE BEHAVIORAL HEALTH
ERIC L. SCHATTL ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHARMAINE L LEGINS

SSN #

Claimant

vs.

BALTIMORE BEHAVIORAL HEALTH 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: 1012385
Appellant: Claimant
Local Office : 64 / BALTOMETRO CALL CENTER

December 07, 2010

For the Claimant: PRESENT, ERIC SCHATTL, ESQ.

For the Employer: PRESENT, MONICA BONDS

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).

PREAMBLE

The Claim Specialist made a "Benefit Determination" on March 12, 2010, to which the claimant timely appealed to the Division of Lower Appeals. On April 30, 2010, Director / Chief Hearing Examiner Judy G. Smylie, Esq., entered a *Decision* dismissing the claimant's appeal of the aforementioned "Benefit Determination" for failure to appear at the hearing scheduled for April 29, 2010. The claimant filed a late request to Reopen her appeal on May 13, 2010, which Director / Chief Hearing Examiner Judy G. Smylie, Esq., denied on May 26, 2010.

The claimant filed a timely appeal to the Board of Upper Appeals on June 1, 2010. By *Remand Order* entered on October 13, 2010, the Board of Upper Appeals remanded the matter for a *de novo* hearing on the

merits of the case because the claimant's attendance of her aunt's funeral was "good cause" for being unable to attend the hearing scheduled for April 29, 2010, within the meaning of COMAR 09.32.06.02 N (2).

FINDINGS OF FACT

The claimant began working for this employer on October 22, 2007, and her last day worked was February 19, 2010. At the time of her discharge, the claimant worked full-time as a Shelter Supervisor/Monitor at the employer's Adult Diagnostic Center, earning an hourly salary of $13.65. The employer terminated the claimant from her position for failure to perform her regular job duties.

On or about October 17, 2008, the claimant received a "Job Description" (ER EX #4), which requires the claimant to, among other duties, "document incidents and resident behaviors that occur during their (the claimant's) period of duty." (ER EX #4). Additionally, on February 11, 2009, the employer issued the claimant a statement captioned "Environment of Care," which the claimant signed for and which specifically lists among the items which require reporting "patient falls." (ER EX #3). Lastly, on February 12, 2009, the employer issued and the claimant signed for a policy requiring the searching of patient belongings for certain items; including "glass items" and "products containing alcohol." (ER EX #2).

On February 11, 2010, the claimant reported for work at 3:00 p.m.; by which time at least three (3) residents/patients were present at the employer's facility. Shortly thereafter one of the residents/patients fell and was discovered to possess a bottle of alcohol. (See ER EX #1). Although the claimant disposed of the alcohol, she did not report either the fall or the possession of alcohol incidents to the charge nurse. Later, when questioned by the employer as part of its investigation of the incidents, the claimant stated "I seem to have (had a) bad day that day. I will make sure that my tasks of overseeing (her unit) is done right." (ER EX #1, Page 3). The employer discharged the claimant on February 19, 2010, due to the seriousness of these violations of the employer's policy.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the employer discharged or suspended the claimant 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 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 an employer has a right to expect and 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).

EVALUATION OF EVIDENCE

The employer had the burden to show, by a preponderance of the credible evidence, the claimant's separation from employment was for conduct which rose to the level of misconduct or gross misconduct, pursuant to the Maryland Unemployment Insurance Law. (See Hartman v. Polystyrene Products Company, Inc., 164-BH-83). In the case at bar, the employer met this burden.

In Alexander v. Helping Hand, Inc., 950-BH-89, the Board of Appeals held "The claimant was discharged due to her failure to complete necessary financial reports, failure to pay to the IRS the payroll taxes withheld, failure to pay unemployment insurance taxes and failure to inform the employer of these facts. The claimant was discharged for gross misconduct." In the case at bar, the claimant failed to properly oversee her unit and failed to report two serious incidents impacting the health and safety of the residents/patients under the employer's care.

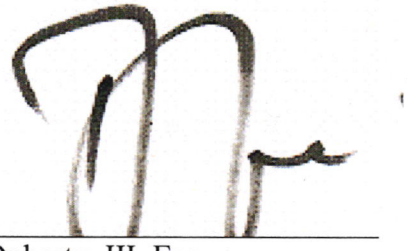
The claimant asserted at the hearing she was unaware of the resident/patient falling and properly reported the possession of alcohol to the charge nurse. The undersigned Hearing Examiner finds the claimant's statements at the hearing on this matter to be not credible. The claimant's contemporaneous, written statement (see ER EX #1, Page 3) contains no such denials or defenses. This inconsistency leads the undersigned to place more credence in the employer's incident contemporaneous documentation, than the claimant's later, self-serving testimony.

Accordingly, I hold the employer met its burden in this case and the claimant's separation from employment was for failure to perform her regular job duties, constituting gross misconduct, and benefits are, therefore, denied.

DECISION

IT IS HELD the employer discharged the claimant for gross misconduct connected with the work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002(a)(1)(i). The claimant is disqualified from receiving benefits from the week beginning February 14, 2010, and until the claimant becomes reemployed and earns wages in covered employment equal to at least twenty (20) times the claimant's weekly benefit amount.

The determination of the Claims Specialist is affirmed.



D J Doherty, III, 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 to Petition for Review

Any party may request a review 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 December 22, 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: November 16, 2010
DW/Specialist ID: RBA21
Seq No: 001
Copies mailed on December 07, 2010 to:
SHARMAINE L. LEGINS
BALTIMORE BEHAVIORAL HEALTH
LOCAL OFFICE #64
ERIC SCHATTL ESQ.
L. PAUL SNYDER