

- DECISION -

Claimant:
TAYLOR B SADE

Decision No.: 67-BR-15

Date: January 21, 2015

Appeal No.: 1412211

S.S. No.:

Employer:
TARA J CREAMER DDS PA

L.O. No.: 64

Appellant: Claimant

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: February 20, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on June 3, 2014. That Decision held the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1002*. Benefits were denied for the week beginning April 6, 2014, and until the claimant becomes reemployed, earns twenty-five times her weekly benefit amount, and then becomes unemployed under non-disqualifying conditions.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts are sufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact and conclusions of law.

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002 provides:

- (a) Gross misconduct...
 - (1) Means conduct of an employee that is:
 - i. 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
 - ii. repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations...

Wanton has been defined as, *inter alia*, heedless, foolhardiness, and recklessly disregarding of consequences. *Dept. of Labor, Licensing and Regulation v. Muddiman, 120 Md.App. 725, 736 fn. 6 (1998)*.

In *Muddiman*, the Court of Special Appeals noted that the two subsections of § 8-1002 (a)(1), "set forth separate definitions of gross misconduct that require different levels of intent." *Id.* at 737. Specifically, the Court concluded that to violate subsection (ii), the repeated violations must provide a "regular and

wanton disregard" of obligations to the employer while subsection (i) requires a "deliberate and willful disregard" that shows "gross indifference." *Id.*

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003 provides:

- (a) Grounds for disqualification – an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that unemployment results from discharge or suspension as a disciplinary measure for behavior that the Secretary finds is misconduct in connection with employment but that is not:
- (1) Aggravated misconduct...or
 - (2) Gross misconduct...

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 the employment relationship, during hours of employment or on the employer's premises, within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1003*. (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.*

In her appeal, the claimant makes reference to and disputes some findings of fact of the hearing examiner. The Board finds that these findings of fact are supported by substantial evidence. The claimant also disagrees with the hearing examiner's determination that the claimant's denials were not credible. The Board has thoroughly reviewed the record of the hearing and finds no reason to alter the hearing examiner's credibility determinations.

The Board further finds that the employer has presented evidence which shows that the claimant had been counseled on numerous occasions for using the company computer for personal reasons and that she failed to abide by the employer's instructions to limit her use of the computer to business reasons only. In addition, the claimant was caught sleeping on the couch after she had clocked in to work. This evidence established repeated violations of the employer's rules and showed a gross indifference to the interests of the employer.

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 upon a preponderance of the credible evidence, that the employer did meet its burden of proof and show that the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., §8-1002 (a)(1)(ii)*. The decision shall be affirmed, for the reasons stated herein and in the hearing examiner's decision.


DECISION

The Board holds that the claimant was discharged for gross misconduct within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1002*. The claimant is disqualified from the receipt of benefits from the week beginning April 6, 2014, and until the claimant has become reemployed, earned twenty-five times her weekly benefit amount, and then become unemployed under non-disqualifying conditions.

The Hearing Examiner's decision is Affirmed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

TAYLOR B. SADE

TARA J CREAMER DDS PA

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TAYLOR B SADE

SSN #

Claimant

Vs.

TARA J CREAMER DDS PA

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: 1412211

Appellant: Employer

Local Office : 64 / BALTOMETRO

CALL CENTER

June 03, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, TERA CREAMER, CARLA HENDERSON

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 claimant, Taylor Sade, began working for this employer in 2010. At the time of separation, the claimant was working as an assistant. The claimant last worked for the employer on or about April 8, 2014, before being terminated.

The claimant received verbal counseling in December of 2013 for job related issues. She had failed to set-up the workplace, and was using the company computer for personal reasons. The claimant had been told multiple times that she was not to use the company computer for personal reasons.

The problems continued, and the claimant was spoken to multiple times about these problems. The claimant continued to engage in wrongdoing; specifically using the company computer for personal

reasons. The claimant, over her last two weeks of work, utilized the work computer for eleven hours for personal reasons. She had specifically been told in the past to only use the computer for work related reasons.

On March 17, 2014, the claimant was caught sleeping on the job.

Primarily as a result of these issues, the claimant was terminated.

CONCLUSIONS OF LAW

Md. Code, Ann., Labor & Emp. Article, Section 8-1002 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.

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 been met.

The claimant was terminated for multiple reasons. A primary reason was because the claimant frequently used the internet for personal reasons. The claimant denied these allegations, but the Examiner does not find this denial credible. In reaching this determination, the Examiner notes that many of these pages were signed into by the claimant and it specifically had her name on the web pages. Therefore, the Examiner finds that it was the claimant who was visiting these pages.

The Examiner also finds the employer witness more credible that the claimant was sleeping on the job than the claimant's denials of same.

This pattern of behavior establishes gross misconduct in connection with the work.

I hold that the claimant's actions showed a regular and wanton disregard of her obligations to the employer and therefore constituted gross misconduct in connection with the work. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1002 pursuant to this separation from this employment.

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). The claimant is disqualified

from receiving benefits from the week beginning April 6, 2014 and until the claimant becomes reemployed and earns wages in covered employment that equal at least 25 times the claimant's weekly benefit amount.

The determination of the Claims Specialist is reversed.



B F Sapp, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 18, 2014. 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: June 02, 2014
AEH/Specialist ID: RBA3H
Seq No: 001
Copies mailed on June 03, 2014 to:

TAYLOR B. SADE
TARA J CREAMER DDS PA
LOCAL OFFICE #64