

- DECISION -

Claimant:
RONALD JACKSON

Decision No.: 716-BR-11

Date: February 07, 2011

Appeal No.: 1033966

S.S. No.:

Employer:
UNIVERSITY OF MD AT CP 360206

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.

- 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: March 09, 2011

REVIEW ON THE RECORD

After a review on the record, the Board modifies the facts by replacing “on or about” in the first sentence of the first paragraph with “in”. The Board also deletes “or about” from the third sentence of the first paragraph. As modified, the Board adopts the hearing examiner’s findings of fact. The Board makes the following additional findings of fact:

The claimant’s restrictions did not render him unable to work. The claimant attempted to return to employment with this employer, but the restrictions could not be accommodated as the employer did not have light-duty work available.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

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).

The hearing examiner found that the claimant had voluntarily left this employment. That conclusion is unsupported by the evidence of record. The claimant did not wish to quit his job, did not intend to quit his job, and did not, in fact, resign his employment. The employer ended the employment relationship when they informed the claimant that no light-duty work, within his restrictions, was available, and that he did not have any leave remaining to cover his absences. This was a discharge.

The employer did not present evidence sufficient to support a finding that the claimant committed any willful or deliberate act with disregard for his employer's interests or expected standards of behavior. The employer also presented no evidence showing that the claimant was careless or negligent with respect to his work or his employer. The claimant was injured and was off work based upon a doctor's order. The employer's doctor released the claimant for work, but the claimant disputed this. The claimant saw his personal physician who disagreed with the employer's physician. There was no evidence that the claimant was bound by the sole opinion of the employer's physician. The claimant was placed on restrictions, but the employer could not accommodate those. The employer advised the claimant that he could return, after exhausting all available leave, only if he could present a specific return-to-work date from his doctor. The claimant could not do this because he had not received such a specific date. That the claimant was not able to obtain a date-certain for his return to full-duty, was not an act or omission which would constitute misconduct.

It is certainly within the employer's rights to terminate the employment of any worker for any legal reason. However, for that reason to disqualify a claimant from benefits, the employer must present sufficient evidence of an act or omission which rises to the level of gross misconduct or misconduct. The employer's evidence in this matter does not meet this burden of proof.

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 also notes that, in his appeal, the claimant discusses his belief that the hearing examiner found him unable to work and that the claimant was not seeking work. A review of the hearing examiner's decision does not reveal these conclusions. Further, because the issue here was the nature of the claimant's separation, and because the Board has reversed the hearing examiner and found the claimant qualified to receive benefits, no further discussion of the claimant's ability, or work search, is relevant to this matter.

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.

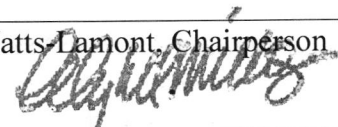
DECISION

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 UNIVERSITY OF MD AT CP.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

RONALD JACKSON
UNIVERSITY OF MD AT CP 360206
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

RONALD JACKSON

SSN #

Claimant

vs.

UNIVERSITY OF MD AT CP 360206

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: 1033966

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

October 14, 2010

For the Claimant: PRESENT

For the Employer: PRESENT , SEAN BALLENTINE

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).

FINDINGS OF FACT

The claimant began working for this employer on or about January of 2008. At the time of separation, the claimant was working as a housekeeper. The claimant last worked for the employer on or about November 18, 2009, before separating in May 2010 as a result of his inability to return to work. Specifically, the claimant went out on a leave of absence as a result of a work-related injury in July of 2008. The claimant was receiving temporary total benefits until their expiration in April of 2010. The claimant was seen for an independent medical examination on April 28, 2010 and released for full duty on May 2, 2010. However, the claimant disputed the results of the examination and reported that his own physician had not released him for full duty. The employer sent the claimant a letter on or about May 11, 2010, notifying him that he exhausted temporary disability benefits and could remain on leave if he had additional leave benefits.

When the claimant exhausted all benefits as of May 15, 2010, the employer's policy required him to submit medical documentation with a definitive return to work date. The claimant did not present any documentation with a return to work date and the employer could not accommodate him with light duty work.

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 he voluntarily quit his 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 been met.

In the instant case, the parties disputed as to whether the separation constituted a quit or a discharge. Under Maryland Unemployment Insurance Law, when a claimant is unable to return to work following a leave of absence, the separation constitutes a quit rather than a discharge. The employer was under no obligation to accommodate the claimant's restrictions and the claimant failed to provide a definitive return to work date per the employer's policy after he exhausted his leave benefits. Thus, the separation is a quit; however, the claimant demonstrated that he did have valid circumstances based on his medical inability to perform the job.

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

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning May 16, 2010 and for the nine weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



M M Medvetz, 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 29, 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: October 04, 2010
CH/Specialist ID: WHG3C
Seq No: 002
Copies mailed on October 14, 2010 to:
RONALD JACKSON
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LOCAL OFFICE #61