

 **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

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	774-BR-92	
	Date:	May 8, 1992	
Claimant:	Willie J. Washington	Appeal No.:	9201131
		S. S. No.:	
Employer:	Montgomery Co. Public Schools c/o Unemployment Tax Service	L.O. No.:	43
		Appellant:	CLAIMANT

5

Issue: Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 8-1002 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

June 7, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The Board adopts the findings of fact but disagrees with the Hearing Examiner's conclusion of law that the employer condoned the claimant's behavior.

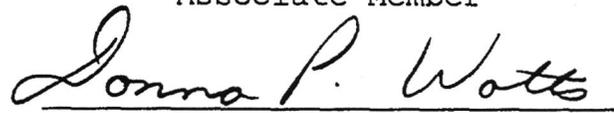
The employer repeatedly warned the claimant about his absenteeism, lateness and failure to properly request leave. Repeated warnings, even over a long period of time, are not condonation. The claimant's excessive absences and lateness, without calling in and in the face of warnings amount to a repeated violation of employment rules that prove a regular and wanton disregard of his obligations, one of the definitions of gross misconduct.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 8-1002 of the Labor and Employment Article stands. He is disqualified from receiving benefits from the week beginning December 1, 1991 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$2,230.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

H: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 —

Claimant:	Willie J. Washington	Date:	Mailed: 2/10/92
		Appeal No.:	9201131
		S. S. No.:	
Employer:	Montgomery Co. Public Schools c/o Unemployment Tax Service	L.O. No.:	43
		Appellant:	Employer
Issue:	Whether the claimant was discharged for misconduct connected with the work within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.		

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON February 25, 1992

— APPEARANCES —

FOR THE CLAIMANT:

Claimant

FOR THE EMPLOYER:

Carol Stroud, Unemployment Tax Serv.
Roy Taff, Empl. Spec. of Montgomery
Co. Public Schools

FINDINGS OF FACT

The claimant was employed between June 15, 1971 and December 4, 1991. He worked full-time, earning \$12.00 an hour as a building service worker.

The claimant was discharged for failing to follow proper procedures when requesting leave.

The credible evidence indicated that the claimant's behavior was repeated, but that it was condoned by the employer. In the discharge letter dated November 20, 1991, written by the Deputy Superintendent of Montgomery County Public Schools, a chronology of the claimant's discipline problems stated clearly that as early as October of 1987, he had been reprimanded and suspended without pay for three days by the then Deputy Superintendent for failing to follow proper procedures when requesting leave. At that point, the claimant was advised that if the problem continued, he would be recommended for dismissal. Nevertheless, in September of 1988, the claimant was reprimanded by the Director of Staffing for the same problem, that is, failing to follow proper procedures. Instead of being discharged, he was once again warned that he would be recommended for dismissal if the problem recurred. Thereafter, during the school year of 1990 and 1991, he exhausted all of his leave balances and was charged with over 176 hours of absence without pay, but was still not discharged, and was invited back for the school year beginning September of 1991. It is unbelievable that the employer once again condoned the behavior, particularly since the claimant was in receipt of a memo dated July 12, 1991 which enumerated another unauthorized leave he had taken from June 3 through June 7, 1991. This memo was written by the claimant's supervisor, Evelyn Gaston, also the building manager, and was sent to the supervisor of school plan operations, and yet, nothing was done to discharge the claimant at that point. The final incident occurred in October of 1991. Although the claimant was allowed bereavement leave between October 16 and October 22, 1991, as a result of the death of his mother in South Carolina, the claimant did not return to work as scheduled. Ms. Gaston documented, in writing, that he did not call in although the claimant states that he did call her from South Carolina at least twice requesting additional leave time. By the claimant's own admission, he understood that in order to have additional leave time, he should have submitted, in writing, a request, twenty-four hours before the leave was scheduled to begin, he did not do this because he was assured by his supervisor that she would put the request in writing.

As a result of the claimant's absence on October 28 through October 30, 1991, followed by his arrival back at work on October 31 and November 1, 1991, docked twenty minutes late on both days, the claimant was recommended for discharge.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1) (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. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

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 the MD Code, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack 271Md. 126, 314 A.2d 113).

In this case, with the facts of which would ordinarily have led to the conclusion of a pattern of gross misconduct, because of the employer continuing condonation of the claimant's behavior, at the very worst, his refusal to follow a known policy, constitutes misconduct.

Although the employer was lax in carrying out its threats of discharge repeatedly, the claimant admits that he was aware of a policy which he violated repeatedly.

DECISION

It is held that the claimant was discharged for misconduct connected with the work within the meaning of the MD Code, Labor and Employment Article, Title 8, Section 1003. Benefits are denied from the week beginning December 1, 1991 and the nine weeks immediately following.

The determination of the Claims Examiner is affirmed, but for the reasons hereinabove stated.


Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: 2/5/92
lc/Specialist ID: 50506

Copies Mailed on 2/10/92 to:
Claimant
Employer
Unemployment Insurance - Wheaton (MABS)