

- DECISION -

Claimant:	Decision No.:	883-BR-14
MARIA CIANCIO	Date:	July 30, 2014
	Appeal No.:	1338142
	S.S. No.:	
Employer:	L.O. No.:	65
CALVERT COUNTY COMMISSIONERS	Appellant:	Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- 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: August 29, 2014

REVIEW OF THE RECORD

Upon review on the record, the Board of Appeals adopts the hearing examiner's findings of fact. The Board of Appeals makes the following additional findings of fact and now based upon all the facts in evidence reverses the decision of the hearing examiner.

On March 22, 2012, the claimant was given a written warning that she was not acting in a professional manner when she engaged in inappropriate conversation with staff members in the workplace.

The claimant was given a written warning on July 11, 2012 for creating an offensive working environment through her inappropriate sexual comments to staff members.

The final incident occurred when the claimant disrupted a staff meeting through her outburst and inappropriate remarks.

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)*.

The Board concurs with the hearing examiner's finding that the claimant was discharged. The claimant resigned rather than be terminated. A claimant who is given the choice of resigning or being discharged and who subsequently resigns, will be considered as having been discharged for the purposes of Maryland Unemployment Insurance Law. *Hickman v. Crown Petroleum Corporation., 873-BR-88*.

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, 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).

Aggravated misconduct is an amplification of gross misconduct where the claimant engages in "behavior committed with actual malice and deliberate disregard for the property, safety or life of others that...affects the employer, fellow employees, subcontractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's products or services...and consists of either a physical assault or property loss so serious that the penalties of misconduct or gross misconduct are not sufficient."

The weight of the credible evidence established that the claimant continued to be disruptive in the workplace after repeated warnings. The claimant's behavior demonstrated a gross indifference to the employer's interests. The Hearing Examiner determined that the employer was unable to provide any details regarding alleged prior incidents. (See footnote #7 in the Hearing Examiner's decision). This is in error. Employer's Exhibit #1 and Employer's Exhibit #3 provide sufficient detail on the events that led to the claimant's written warnings.


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 met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1002*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

DECISION

It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning November 3, 2013 and until the claimant becomes re-employed, earns at least twenty five times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MARIA CIANCIO

CALVERT COUNTY COMMISSIONERS

JAMES A. STULLER

CALVERT COUNTY COMMISSIONERS

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARIA CIANCIO

SSN #

Claimant

vs.

CALVERT COUNTY COMMISSIONERS

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: 1338142

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

February 04, 2014

For the Claimant: PRESENT, IMAD DIDES, ESQ.

For the Employer: PRESENT, JAMES A. STULLER, AMY REQUEILMAN

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).

FINDINGS OF FACT

The claimant, Maria Ciancio, began working for this employer, Calvert County Commissioners, on March 21, 2011, and her last day worked was November 8, 2013. At the time of her discharge, the claimant worked part-time as a customer service attendant II.

The claimant was discharged for disrupting a staff meeting. On November 4, 2013, the claimant was in a staff meeting with eight other people. The individual conducting the meeting was discussing policies and procedures. At one point, the claimant believed that the individual was referring to an incident which involved her; the claimant's name had not been used at that point. The claimant interrupted the meeting by exclaiming "we all know who we are talking about, why not just come out and say it's me." The claimant

was terminated after this outburst. The claimant was advised that she was to be terminated for this incident but was allowed to resign instead.

Prior to this final incident, the claimant had been documented for engaging in unprofessional conduct in the workplace on two previous occasions in 2012.

CONCLUSIONS OF LAW

In Tressler v. Anchor Motor Freight, 105-BR-83, the Board of Appeals, citing the Maryland Court of Appeals decision in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975), held “A claimant who resigns in lieu of discharge does not show the requisite intent to quit.” Therefore, a resignation in lieu of discharge is treated as a discharge for the allocation of the burden of proof.

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended 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)].

In Brooks v. Conston of Maryland, Inc., 377-BR-88, the Board of Appeals held “The claimant was discharged for engaging in a shouting match with a security guard hired by the employer. The shouting disrupted the employer's business. The claimant lost her temper and engaged in inappropriate conduct. This constitutes misconduct.”

In Schoo v. Davis, Garth, et al., 603-BR-90, the claimant was cooperative and courteous on most occasions. However, on one occasion, she walked out of a counseling session called by her supervisor, even though she had been told that the session was not finished. The claimant was discharged for misconduct. In Rayfield v. Elite Communications, 123-BH-90, the claimant was discharged because she asked her supervisor a question at a meeting. The question concerned the wages of entry level employees. It was a reasonable question and was not asked in an insubordinate manner. There was no misconduct.

EVALUATION OF EVIDENCE

The credible testimony of both parties establishes that the claimant was advised that she was going to be terminated but instead, was allowed to resign. A resignation in lieu of discharge is treated as a discharge for the allocation of the burden of proof. See Tressler, supra. Therefore, the employer had the burden to show, by a preponderance of the credible evidence, the claimant's termination 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 the case at bar, the claimant disrupted the employer's staff meeting because she believed that she was the subject of a particular incident being discussed at the meeting, even though her name had not been referenced. The employer's witness testified that the claimant stood up and stated that the meeting or

discussion was “fucking bull-“at which point a supervisor ended the meeting because of the outburst. At the hearing, the claimant denied standing up during the outburst, or using profanity however, she admitted disrupting the meeting when she exclaimed that the individual speaking should just say that the matter that was being discussed was about her. The claimant’s reaction and outburst was clearly unwarranted and unprofessional and disruptive to the staff meeting. Based on the claimant’s own testimony, it is clear that the claimant engaged in wrongful conduct committed within the scope of her employment relationship, during hours of employment, or on the employer’s premises, warranting a finding of misconduct.¹

Accordingly, the employer met its burden in this case and the claimant’s discharge was for a single incident of disrupting the workplace, constituting simple misconduct, warranting the imposition of a weekly penalty.

DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. Benefits are denied for the week beginning November 3, 2013 and for the nine (9) 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 reversed.

V. Nunez, 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.

¹ The employer was unable to provide any details regarding the alleged prior incidents of unprofessional conduct in the workplace, and the claimant denied engaging in any course of wrongful conduct. Therefore, there was insufficient presented by the employer to establish that the claimant engaged in a pattern of unprofessional conduct in the workplace sufficient to warrant a finding of gross misconduct.

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 February 19, 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: January 31, 2014
DAH/Specialist ID: USB18
Seq No: 001
Copies mailed on February 04, 2014 to:

MARIA CIANCIO
CALVERT COUNTY COMMISSIONERS
LOCAL OFFICE #65
JAMES A. STULLER