

**- DECISION -**

Claimant:  
CHAPPELL D WILSON

Decision No.: 1469-BR-06

Date: July 17, 2006

Appeal No.: 0607046

S.S. No.:

Employer:  
LENDERS ALLIANCE LLC

L.O. No.: 61

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).

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**- 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 17, 2006

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**REVIEW ON THE RECORD**

Upon review of the record in this case, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant was employed from January 2004 through March 8, 2006 as a full-time auditor. She was discharged for allegedly failing to perform four "file audits". The claimant performs hundreds of file audits per year. The claimant performed file and operations audits before and after the time of the alleged four incidents. The claimant e-mailed the missing file audits to her supervisor shortly before her discharge.

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).

In the case of a discharge, the employer bears the burden of demonstrating based upon a preponderance of credible evidence that the claimant's actions rise to the level of misconduct or gross misconduct. In the case at bar, the employer's case was based on hearsay evidence. While hearsay is admissible in an administrative hearing, it is not given the same weight as live, first hand testimony.

The employer case and the claimant's case are in equipoise. The claimant testified that she performed the four file audits and forwarded the audits to the employer via email; the employer asserts that she did not. The parties had a full and fair opportunity to present all evidence at the hearing. The claimant did not produce the emails at the hearing. Concomitantly, the employer failed to produce any documents or first-hand testimony to refute the claimant's assertions. The Board did not consider the documents submitted by the claimant on June 21, 2006 (in correctly dated July 21, 2006).

The Board finds insufficient evidence to sustain a finding of misconduct or gross misconduct. *Scruggs v. Division of Correction*, 347-BH-89. Therefore, the Board finds that the employer did not meet its burden in this case. The hearing examiner's decision shall be reversed

### 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 her separation from employment with LENDERS ALLIANCE LLC.

The decision of the Hearing Examiner is reversed.

had been completed. The employer however did not receive any confirmation that the file portion of the audit had been completed. The claimant was confronted regarding this matter at which time the claimant was adamant that she had completed the file portion of the audit. The employer then asked the claimant to go back to the branches in question to get copies of the audit. The employer waited for this information to reach them but to no avail. The employer then spoke with the branch managers who indicated that the claimant had never completed the file portion of the audit. It was also reported to the employer that the claimant had gone to the branches and informed the branch managers that if her supervisor asked they were to report that the file audit had been done when in fact it had not. The claimant was thus discharged. Prior to this time, the claimant had received no formal warnings from the employer but had been spoken to regarding deficiencies in certain files.

### **CONCLUSIONS OF LAW**

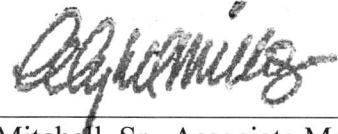
Md. Code Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that 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**

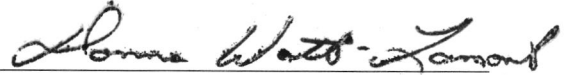
In the case of a discharge, the burden of proof is on the employer, to show by a preponderance of the credible evidence, that the discharge was for actions which constitute some degree of misconduct as defined within the Maryland Unemployment Insurance Law. The employer in the instant case has met this burden of proof. The credible testimony presented at the hearing indicates that the claimant was discharged from this employment for failing to perform her job duties. The claimant's supervisor testified credibly that the claimant did not complete the file portion of audits conducted in January 2006. The supervisor went on to state that she spoke to the branch managers who indicated that the claimant had never performed the file portion of the audit but had instructed the branch managers to tell the claimant's supervisor that she had. Although the claimant denied this allegation during the hearing, based upon the demeanor of the witnesses, the Hearing Examiner finds the employer's testimony in this matter to be credible. Accordingly, it is held that the claimant was discharged for gross misconduct as defined within Section 8-1002 of the Maryland Unemployment Insurance Law.

### **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)(i). The claimant is disqualified from receiving benefits from the week beginning March 5, 2006 and until the claimant becomes reemployed and earns wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Copies mailed to:

CHAPPELL D. WILSON

LENDERS ALLIANCE LLC

MORRIS E. FISCHER ESQ.

LENDERS ALLIANCE LLC

Michael Taylor, Agency Representative

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

CHAPPELL D WILSON

SSN #

**Claimant**

vs.

LENDERS ALLIANCE LLC

**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: 0607046

Appellant: Employer

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

May 25, 2006

**For the Claimant :** PRESENT , MORRIS FISCHER, ESQ.

**For the Employer :** PRESENT , LENA STOOTTS

**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 was employed as a full time auditor with Lender Alliance from January 2004 until March 8, 2006. The claimant's salary at the time of separation from this employment was approximately \$65,000, annually.

The claimant was discharged from this employment for failure to perform her job duties. The culminating incident which led to the claimant's discharge occurred when the claimant was scheduled to perform audits in the State of Massachusetts over the dates of January 9, 2006 through January 12, 2006. As part of the regular auditing process, the claimant was required to complete both an operations audit and a file audit. The claimant sent in a documentation to the employer confirming that the operations section of the audit

The determination of the Claims Specialist is reversed.

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R M Liberatore, 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 the overpayment within 30 days from the date the overpayment is established. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. 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.**

### **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 June 08, 2006. 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

**NOTE:** Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : May 09,2006

TW/Specialist ID: WCP2D

Seq No: 001

Copies mailed on May 25, 2006 to:

CHAPPELL D. WILSON

LENDERS ALLIANCE LLC

LOCAL OFFICE #61

MORRIS E. FISCHER ESQ.

LENDERS ALLIANCE LLC