CASE NO. 93308008

Part _____ of _____ Parts

In The Circuit Court for Baltimore City

CIVIL

In the Matter of

CECELIA BOARMAN
VS.
LITTLE SYSTEM, INC.

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CECILIA BOARMAN,	*	IN THE
Appellant,	*	CIRCUIT COURT
v.	*	FOR
LITTON SYSTEMS, INC.	*	BALTIMORE CITY
and	*	#93308008/CL172143
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT,	*	
Appellees.	*	

* * * * *

MEMORANDUM IN SUPPORT OF THE BOARD OF APPEALS

I. Introduction

The Board of Appeals (the "Board"), Department of Economic and Employment Development ("DEED"), an Appellee herein, files this Memorandum in support of its decision.

The Board found that Cecilia Boarman, Appellant, was not entitled to unemployment insurance benefits because she was discharged for gross misconduct connected with her employment within the meaning of the Maryland Labor and Employment Article, § 8-1002.[1] Ms. Boarman appealed that decision to this Court.

The factual findings made by the Board are supported by substantial evidence in the administrative record, the Board made no errors of law, and therefore, the Board's decision should be affirmed.

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[1]Unless otherwise indicated, all statutory references are to Title 8 of the Labor and Employment Article of the Maryland Annotated Code. (1991 Vol., 1993 Cum. Supp.).

II. Scope of Review

Judicial review of the administrative adjudication of unemployment insurance appeals is governed by §8-512. Findings of fact made by the Board are binding upon this court if there is substantial evidence in the record to support them. Section 8-512; Board of Educ. of Montgomery County v. Paynter, 303 Md. 22, 491 A.2d 1186 (1985); Allen v. Core Target City Youth Program, 275 Md. 68, 338 A.2d 237 (1975). The scope of this court's review is limited to a determination of whether reasoning minds could have reached the same conclusion as the Board based on the facts and permissible inferences in the record. Baltimore Lutheran High School Ass'n, Inc. v. Employment Sec. Admin., 302 Md. 649, 490 A.2d 701 (1985). If the Board's conclusions could be reached by reasoning minds and the decision is based upon substantial evidence, this court has no power to reject that conclusion.[2] Paynter, 303 Md. at 35, 491 A.2d at 1193; Baltimore Lutheran, 302 Md. at 662,0490 A.2d at 707-08.

Any legal argument that was not raised in the administrative process is foreclosed from appellate review. Department of Econ. & Empl. Dev. v. Owens, 75 Md. App. 472, 541 A.2d 1324 (1988);

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[2] A remand for further factfinding is appropriate only after the circuit court reviews the record for substantial evidence and finds it lacking. Department of Econ. & Empl. Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993); Department of Econ. & Empl. Dev. v. Jones, 79 Md. App. 531, 558 A.2d 739 (1989); Juiliano v. v. Lion's Manor Nursing Home, 62 Md. App. 145, 488 A.2d 538 (1985).

Chertkof v. Department of Natural Resources, 43 Md. App. 10, 402 A.2d 1315 (1979).

The Board's determination of the credibility of witnesses' testimony is binding upon the reviewing court. Department of Empl. & Training v. Mayor of Baltimore, 72 Md. App. 427, 530 A.2d 763 (1987). When faced with conflicting inferences, ". . .it is for the referee to draw the inference, not the reviewing court." Paynter, 303 Md. at 36, 491 A.2d at 1195. "Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inference." Baltimore Lutheran, 302 Md. at 663, 490 A.2d at 708.

The administrative findings in this case are supported by competent, material and substantial evidence contained in the record submitted by the Board. Accordingly, the decision of the Board should be affirmed.

III. Facts

Cecilia Boarman (the "claimant") was employed by Litton Systems, Inc. from September 22, 1975 until her termination by memorandum on March 5, 1993. (R. 46).[3] Litton Systems, Inc. employed Ms. Boarman as an electro-mechanical inspector. (R. 46). As an inspector Ms. Boarman was instructed "to inspect hardware in accordance with our [the company's] inspection instructions." (R. 50). The employer

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[3]The letter "R" refers to the handwritten page numbers on the lower right corner of each page in the administrative record.

sub-contracted with Grumman Corporation, who in turn contracted with the United States Government. Because of the subcontractor relationship representatives of both Grumman Corporation and the federal government conducted periodic inspections of Litton's facilities and processes.

In assembling various mechanical and electrical product units, the employer established "assembly inspection instructions" ("AII") lists that enumerated each task to be performed by an employee when conducting an inspection. (R. 53). When an employee finished the task in question, the employee placed a stamp of the employee's assigned number at the end of the line indicating completion of the task. (R. 54). Ms. Boarman was assigned stamp number "7554." (R. 54, 56).

A shop order traveler ("SOT") accompanies each unit through the assembly and inspection process. (R. 12, 95). The SOT is stamped as each listed operation is completed. (R. 95, 98). During the various stages of assembly tests of the units are performed. Upon a unit's failure, a failure test report ("FTR") is prepared and the unit is sent to manufacturing and reworked. (R. 75-77). Upon completion and inspection the FTR is stamped and the unit proceeds to the next operation.

After the customer approves the unit by stamping the SOT, any unit failures subsequent to this approval are recorded in the system malfunction and correction log ("M&C"). (R. 182-83). See R. 372. Failures and defects cause the unit to be sent back to manufacturing for correction ("rework"). After being corrected the unit must be

inspected, approval of the rework must be stamped on the M&C log, and the inspector must submit the unit to the customer for approval. (R. 182-83).

A. The First Incident

On February 2, 1993, Mr. Tom Burtis, a representative of Grumman Corporation, rejected a bite generator WRA-15 (20E015) because nine of the cable connectors were not torqued or sealed.[4] (R. 59-60, 114). Mr. Burtis noted his findings in an inspection card complaint and requested that the unit be corrected, resubmitted for a complete inspection, and that a written corrective action report be prepared. (R. 114). According to the assembly inspection instruction for the WRA-15, the employee was to verify the tightness of the connectors by "torquing" them -- a procedure in which the connector (nut) on the cable is tightened to specification using a torque wrench. (R. 64-65, 107-09). These instructions were explained at lines 6.1.11 and 6.1.13 of the assembly inspection instruction (AII 255):

> 6.1.11 Verify torque of RF termination (38130) and 90 degree angle adapters (3) at 7-10 in lbs.
>
> 6.1.13 Check torque of cable connectors at 7-10 in lbs.

(R. 107).

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[4] A connection may be sealed by applying torque seal, a red epoxy based substance, on the back of the nut and cable of the connector. (R. 310, 370). Torque seal is used to determine whether the nut has been moved. (R. 65).

Additional assembly inspection instructions AII (No. 97) (dated April 11, 1985) specified that all WRA's on the E2C project be torque sealed prior to the MTP test. (R. 549). The AII (No. 97) for "torque seal application" specified that "the torque seal is to be applied to all SMA cable connectors only after the connector has been inspected and accepted for the proper tightness . . . ." (R. 549). Instruction 3.2 tells the inspector to apply a continuous stripe of torque seal across the back of the connector immediately following the acceptance inspection of the connector torque. (R. 549). After Mr. Burtis found the nine loose connectors Leroy Stanton, Ms. Boarman's immediate supervisor, instructed her to seal each connector as she torqued it to avoid any confusion. (R. 61, 334).

B. The Second Incident

On February 26, 1993, Mr. Tom Burtis, Grumman Corporation, and Mr. Anthony Yero, United States Government, conducted an inspection of a high band receiver WRA 5-8 that had been reworked because of a band 4 failure. During the inspection both Mr. Burtis and Mr. Yero found that the connectors were not tightened, nor torqued, but were torque sealed indicating that they had been inspected. (R. 67-78).

According to the assembly inspection instructions for the WRA 5-8 (No. 181) the employee was required to check the cables and verify the torque:

> 6.1.14 Verify installation of cables and check matched sets.
>
> 6.1.15 Verify torque to be 7-10 in lbs.

(R. 120).

In a written corrective action request Mr. Yero made five specific complaints regarding Ms. Boarman's inspection:

1. The connectors were not torqued.
2. The torque seal was on the connectors and not broken.
3. There was no torque wrench available in the immediate area.
4. There was no visible AII at the station.
5. The inspector had stamped the item off as completed.

(R. 124a). Mr. Yero also complained the claimant "became very loud and shouted at me, that torque seal was a waste of time and money." (R. 124a).

C. Procedural Background

Upon her discharge Ms. Boarman applied for unemployment compensation benefits. A DEED claims specialist found that Ms. Boarman's conduct constituted simple misconduct within the meaning of § 8-1003 and disqualified her from receiving benefits for a period of seven weeks. (R. 20). Claimant appealed this determination and a full evidentiary hearing was held before a hearing examiner on April 19, June 8, and July 8, 1993. (R. 39, 139, 383). The hearing examiner reversed the claims specialist finding that claimant's conduct properly constituted gross misconduct within the meaning of § 8-1002. (R. 562-66). Ms. Boarman appealed to the Board of Appeals who, based upon a review of the record, affirmed the decision of the hearing examiner. (R. 573-74). Pursuant to Maryland Rule 7-202 and § 8-510 Ms. Boarman appealed the Board's decision to the Circuit Court for Baltimore City.

IV. The hearing examiner's decision denying Ms. Boarman unemployment compensation is supported by substantial evidence in the administrative record and is correct as a matter of law.

A. Ms. Boarman's violation of the employer's work policy was willful and deliberate and constituted gross misconduct.

The Board found that the claimant's conduct constituted gross misconduct pursuant to § 8-1002 that provides, in pertinent part:

> (a) "Gross misconduct" defined. - In this section "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 . . .

The Board found that claimant's intentional stamping of shop order travelers, assembly inspection instructions and the M&C log, without performing the work, and belligerent behavior toward the employer's customers met this definition of gross misconduct. (R. 564-65). We believe this is a correct application of the law and ask this honorable court to affirm the decision of the hearing examiner.

The Maryland Court of Appeals has stated that there is no hard and fast rule to determine what constitutes deliberate and willful misconduct. Employment Sec. Bd. v. LeCates, 218 Md. 202, 210, 145 A.2d 840, 844 (1959); Watkins v. Employment Sec. Admin., 266 Md. 223, 292 A.2d 653 (1972).

In LeCates, the Court quotes favorably from 81 C.J.S. Social Security and Public Welfare §162, where "deliberate" and "willful" misconduct is defined as:

> Deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee constitutes misconduct. . . . [W]illfulness exists where the injury to the employer, although realized, is so recklessly disregarded that, even though there is no actual intent, there is at least a willingness to inflict harm, or a conscience indifference to the perpetration of the wrong; in such a case constructive intention is imputable to the employee. LeCates, supra, 145 A.2d at 844. (emphasis added)

The Court in LeCates also quotes with approval from a Pennsylvania case, Philadelphia Transp. Co. v. Unemployment Compensation Bd. of Review, 186 Pa. Super. 142, 141 A.2d 410 at 413 (1958):

> "Willful misconduct" is not defined in the statute [nor is it in the Maryland statute], but this court has held it to comprehend an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations to the employer. (emphasis added)

What constitutes "gross misconduct" as used in § 8-1002 is not solely a question of law. Sections 8-1002 and 8-512(d) indicate the Legislature's intent to commit to the Department of Economic and Employment Development the administrative function of deciding, on the facts of each case, what constitutes gross misconduct in light of its expertise in the field. See, e.g., Department of Empl. & Training v. Mayor of Baltimore, 72 Md. App. 427, 530 A.2d 763, 766 (1987) ("the Legislature created the Board as the ultimate fact finder for the agency"). The disqualification is for "behavior that the Secretary finds is gross misconduct." Section 8-1002(b), emphasis added. See also Paynter, supra.

It is not for the parties nor for this Court to determine on the facts of this case whether claimant's specific conduct falls within the statutory definition of gross misconduct. The Board has been designated by the General Assembly to apply the Maryland Unemployment Insurance Law to the facts of each case. The appellate courts in Maryland have repeatedly held that it is within the province of the Board to resolve conflicting evidence, and, where inconsistent inferences from the same evidence can be drawn, it is for the Board to draw the appropriate inference. Baltimore Lutheran, 302 Md. at 663, 490 A.2d at 708. A question of fact exists where conflicting inferences can be drawn from undisputed facts. Id. Even if the conflicting inferences go to the "ultimate question" (i.e., whether there was "gross misconduct"), that does not make the question before the reviewing court a question of law. Paynter, 303 Md. at 39, 491 A.2d at 1194-95.

What conduct rises to the level of disqualifying gross misconduct is a mixed question of law and fact. The issue of the "reasonableness" of employers' expectations, of "deliberateness" and "willfulness" of conduct, of what "standards of behavior" a Maryland employer has the "right" to expect, and of the type of conduct that shows a "gross indifference" to the "interest" of an employer are all factual, labor-related issues that are within the particular expertise of the Board.

Reviewing courts are generally reluctant to second guess administrators in areas

> . . . especially within the expertise of the administrative officials administering the unemployment insurance law, involving as it does

> many subtle considerations and nuances of fact which need evaluation by those trained to make the evaluation. It would be the rare case indeed which would justify a court disturbing that administrative determination . . . .

Barley v. Department of Employment Security, 242 Md. 102, 106, 218 A.2d 24, 27 (1966). However, the reviewing court may substitute its judgment on the law for that of the agency if and only if the factual findings made by the agency and supported by substantial evidence are susceptible of but one legal conclusion, and the Board failed to reach that one conclusion. Ramsay, Scarlett & Co., Inc. v. Comptroller of the Treasury, 302 Md. 825, 490 A.2d 1296 (1985).[5] Where there may be differing views - not as to the law governing the case, but rather as to its proper application to the established evidence of record - the reviewing court must defer to the agency's view. Id. at 937, 490 A.2d at 1302. Because the facts of this case are susceptible of more than one legal conclusion and because the conclusion reached by the hearing examiner is reasonable, the reviewing court must yield to the expertise of the agency in applying the law to the facts and to the agency's interpretation of its own statute.

Under the analysis of Paynter and Ramsay, Scarlett, the Board made no errors of law in the instant case. The Board approached the

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[5]Although Ramsay, Scarlett involved an accounting issue in a tax case under Maryland Annotated Code, Art. 81, the standard of judicial review is §229(o) of decision of the the Tax Court is the same as that in unemployment insurance cases. Even the technical tax issue in Ramsay, Scarlett was held not to be solely a question of law that involved no agency expertise and that would justify a substitution of judgment standard of appellate review.

issue in the light of the applicable statute, § 8-1002, recognized the relevant criteria prescribed in the statute and the correctly applied the law. The conduct revealed by the record is precisely within the terms of § 8-1002. Specifically, the Board and hearing examiner found that Ms. Boarman was discharged for conduct that demonstrates a deliberate and willful disregard of the standards of behavior which an employer has a right to expect. (R. 564).

The evidence of record establishes that Ms. Boarman, on two separate occasions, stamped AIIs, SOTs, and the M&C log with her stamp number, without performing the requisite tasks in a satisfactory manner. AII (No. 255) instruction numbers 6.1.11 and 6.1.13 specifically required Ms. Boarman to verify the torque of the cable connectors on the WRA-15 and AII (No. 97) required her to torque seal the connectors after torquing them. (R. 107, 549). In the first instance, Mr. Burtis found that nine of the connectors were loose and none had been torque sealed. (R. 59-60, 114). It is undisputed that Ms. Boarman did not apply torque seal to the connectors after she allegedly torqued them. Her failure to torque seal, in compliance with AII (No. 97) and (No. 255), indicates that she did not satisfactorily complete the assigned task. (R. 564-65).

In the second incident, both Mr. Burtis and Mr. Yero observed that the connectors were not torqued but had, in fact, been torque sealed. Assembly inspection instructions (No. 181) numbers 6.1.14 and 6.1.15 specifically required the employee to check the cables and verify

the torque. (R. 120, 76-77, 179).[6] Ms. Boarman stamped the FTR (factor test reject) forms, numbers 01360 and 01362, indicating completion of her inspection. (R. 124). FTR 01362 instructed the manufacturing department to replace the cable set (at box 35 and 38). (R. 124, 75-77, 178). Ms. Boarman's stamp number 7554 appears at the lower hand corner of the FTR indicating completion of her inspection of the repair. (R. 124). Her stamp also appears on the system M&C log indicating her inspection of the replaced cable set. (R. 372). Because the cable set had been replaced, the cable connectors needed to be torqued and sealed to ensure that the rework was up to AII specifications. (R. 120, 78, 77, 179).

Based upon these facts, the hearing examiner found that the cable connectors had not been tightened but had been torque sealed. (R. 564). The hearing examiner also found that the employer's AII for WRA 5-8 (No. 181) required verification of the torque at 7-10 lbs., and that Ms. Boarman had stamped the appropriate document indicating completion of this task. (R. 564). The factual findings are clearly supported by the testimony of Mr. Presti (R. 67-79), Mr. Burtis (R.

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[6] In her testimony Ms. Boarman stated that the employees had no instructions for rework tasks. (R. 405). Contrary to Ms. Boarman's assertion, Mr. Presti, vice president of product assurance, testified that the overall job of an inspector was "to inspect hardware in accordance with our facility inspection instructions." (R. 50). Mr. Presti also testified that the inspection on the second FTR "would include torquing and torque seal," (R. 178-80) and that an inspector is to verify that the rework "is up to the AII level." (R. 77). The Board's determination of the credibility of witnesses' testimony is binding upon the reviewing court. Department of Empl. & Training v. Mayor of Baltimore, 72 Md. App. 427, 530 A.2d 763 (1987).

301-08), the assembly inspection instructions for WRA 5-8 (No. 181) (R. 118-23), the factor test reject forms (R. 124), and the system malfunction and correction log. (R. 372).

When confronted with the problem, Ms. Boarman responded in a belligerent and contentious manner. Mr. Presti indicated that his customers were upset with their treatment by the claimant. (R. 82, 127). Mr. Yero filed a corrective action request that specifically stated that the claimant "became very loud and shouted at me, that torque seal was a waste of time and money." (R. 124a). Mr. Burtis corroborated the fact that Ms. Boarman "did some rather loud talking to Mr. Yero." (R. 305). Mr. Yero also testified that he attempted to explain the purpose of torque and torque seal to claimant but that she said torque seal was a waste of time and money. (R. 474). Based on these exhibits and testimony, the hearing examiner found that Ms. Boarman was belligerent and inappropriately told Mr. Yero that "torque seal was a waste of time and money." (R. 564). These factual findings are clearly supported by substantial evidence in the administrative record.

As a result of these incidents, the federal government required more involvement in the in-house inspection process. (R. 210, 564, 361-63). The hearing examiner properly concluded that Ms. Boarman's stamping of AIIs, FTRs, and the M&C log, when she had not correctly torqued and sealed the relevant connectors, in light of the applicable instructions and the instruction she personally received from her supervisor, constituted gross misconduct. The hearing examiner noted that "The claimant knew or should have known that she had not performed the tasks in a satisfactory manner." (R. 565). By

deliberately stamping these documents, knowing that she had not completed the assigned tasks, Ms. Boarman falsified her employer's records. (R. 565).

In addition to the stamping issue, Ms. Boarman responded to questioning of her job performance in a belligerent, contentious and wholly inappropriate manner. (R. 124a, 305, 474, 565). Her belligerent behavior clearly demonstrated a deliberate and willful disregard of the standards of behavior which an employer may rightfully expect. (R. 565). The hearing examiner correctly found that Ms. Boarman's conduct in the two stamping incidents and her belligerent treatment of her employer's customer constituted gross misconduct within the meaning of § 8-1002(a)(1)(i).

The reviewing court, honoring the expertise of the Agency, must review the Board's determination in the light most favorable to the Agency (the Agency's decision is prima facie correct and carries the presumption of validity), and the decision of the Board must be left undisturbed absent an error of law. Baltimore Lutheran, 302 Md. at 663-64, 490 A.2d at 708.

B. Appellant's arguments necessarily fail.

1. The hearing examiner properly found that torque sealing was required during Ms. Boarman's inspection of the WRA-15 unit.

Ms. Boarman alleges that the hearing examiner erred by overlooking the length of time between Ms. Boarman's inspection and the discovery of the loose connectors and further alleges that the employer's policy concerning when torque seal should be applied is unclear. (Appellant's memorandum at 15). Although other general

inspections occurred after Ms. Boarman completed her inspection (operation 035), Ms. Boarman's assembly inspection instructions specifically required her to verify the torque of the cable connectors. (R. 107). If Ms. Boarman had inspected, torqued and sealed the connectors, as required by the assembly inspection instructions, the implied and alleged tampering or negligence of other employees could be verified.

Furthermore, the elements involved in the assembly and inspection process were explained through testimony and documentation. (R. 12, 158-67, 331-32). The hearing examiner properly considered the process employed by the company, the fact that some eighteen days had elapsed between Ms. Boarman's inspection and the discovery of the loose connectors, and the subsequent inspections made by other inspectors. All of this evidence was produced during the hearing and available to the hearing examiner for consideration. In the instant case the hearing examiner found the employer's evidence more compelling, particularly in light of Ms. Boarman's involvement in a second incident. (R. 565).

During the administrative hearing the employer clearly established that AII (No. 255) instruction numbers 6.1.11 and 6.1.13 required the claimant to verify the torque of the connectors. (R. 57-59, 65-66, 96, 107-09). The employer also submitted AII (No. 97) (dated April 11, 1985) to show that all WRA's and LRU's on E2C should be torque sealed "prior to the MTP test." (R. 549). A subsequent AII (No. 031) was produced to show the continuing requirement that connectors be torque sealed prior to the MTP test. (R. 370). Ms. Boarman now contends that the terminology "prior to" is so vague that she did not know

whether she was required to apply the torque seal. Such an argument is clearly specious.

Instruction 3.2 specifically states that an inspector must apply a continuous stripe of torque seal across the back of the connector immediately following the acceptance inspection of the connector torque. (R. 549). The two documents clearly demonstrate that Ms. Boarman should have torqued the connectors in compliance with lines 6.1.11 and 6.1.13 of AII (No. 255) and sealed the connectors in accordance with AII (No. 97). (R. 107, 549). Substantial evidence supports the Board's conclusion that claimant's conduct in placing her inspection stamp number next to the assigned operations, when she "knew or should have known that she had not performed the tasks in a satisfactory manner" constituted gross misconduct. (E. 565).

The hearing examiner noted with great specificity that "If the claimant had a question about the tasks which had been assigned to her with respect to both the WRA-58 [5-8] and WRA-15, the claimant could have consulted with her supervisor or with another individual in a position of authority." (R. 565). Claimant assumed that torque sealing was not required during her inspection of WRA-15 and was specifically told by Mr. Stanton to torque and seal in the future. (R. 221). Thus, claimant's allegation that the AII failed to specify when she should torque seal is unsupported and disputed by the evidence of record.

2. Mr. Burtis' approval of a unit torqued in his presence does not alter Ms. Boarman's falsification of records.

Ms. Boarman also alleges that Mr. Burtis' approval of the recently torqued unit prevents her stamping of the M&C log from constituting a falsification of the employer's record. (Appellant's memorandum at 22-23). In his testimony Mr. Burtis indicated that during his inspection he discovered two loose cables. (R. 301). Mr. Burtis checked the looseness of the cables with a torque wrench obtained from a nearby inspection station and found that the cables required three turns. (R. 302). In the presence of Mr. Burtis, Ms. Boarman torqued and sealed the connectors. Mr. Burtis verified the work and stamped the necessary paperwork. (R. 306). Mr. Burtis' stamp on the M&C log does not absolve Ms. Boarman from her failure to complete her inspection and her falsification of records by indicating completion of the inspection. Because the unit had been torqued and sealed in his presence no reason existed for requesting additional work (rework). Once Ms. Boarman corrected the torque the unit met specification.

Claimant also suggests that Mr. Yero chose to discipline her based upon his "misunderstanding" of the events. This interpretation of the facts is unsupported by the weight of the evidence and largely irrelevant. The hearing examiner found, and the record supports the finding, that Ms. Boarman stated: "[T]orque seal was a waste of time and money." (R. 82, 124a, 268, 564). Ms. Boarman was belligerent and contentious to the employer's customers. (R. 82, 84, 124a, 564). The hearing examiner independently found that this belligerent conduct alone properly constituted gross misconduct. (R. 565).

3. Ms. Boarman misstates the intent requirement of the gross misconduct statute.

Ms. Boarman repeatedly alleges that she did not act willfully and deliberately to hurt her employer. Appellant's assertion that "an element of deliberate intention to harm the employer is necessary for a finding of gross misconduct" is unsupported by case law or Board precedent. (Appellant's memorandum at 14). The statutory language dictates that a deliberate and willful disregard (intent) be shown with respect to the standards of behavior that the employer rightfully expects. Section 8-1002(a)(1)(i). Alternatively, the requisite intent may be inferred from repeated violations of employment rules that demonstrate a regular and wanton disregard of the employee's obligations to the employer. Section 8-1002(a)(1)(ii). An employee need not intend to harm the employer -- an intentional, wanton, reckless, or negligent disregard of employment rules or rightfully expected behavior may suffice.

The Court of Special Appeals recently noted in Department of Econ. & Empl. Dev. v. Hager, 96 Md. App. 362, 371, 625 A.2d 342, 347 (1993), that the determination of whether a claimant's action is accompanied by a "deliberate and willful" state of mind is a factual issue for the Board:

> "The state of man's mind is as much a matter of fact as the state of his digestion." Noffsinger v. Noffsinger, 95 Md. App. 265, 275, 620 A.2d 415 (1993) (quoting Lord Bowen in Edgington v. Fitzmaurice, 29 Ch.D. 459, 483 (1885)). It is a fact that cannot be proven directly. The matter is determined by drawing reasonable inferences from admitted conduct.

Hager, 96 Md. App. at 371, 625 A.2d at 347.

In the instant case the hearing examiner found, based upon the testimony and evidence presented, that by deliberately stamping her number "7554" on the SOTs, AIIs, and M&C log Ms. Boarman indicated that she had performed these tasks. The hearing examiner concluded that:

> [I]t seems that the claimant knew that she had not really performed the assignments that she should have performed with respect to both the WRA-15 and WRA-58 [5-8] because of the claimant's statement to Mr. Yero, that "torque seal was a waste of time and money."

(R. 565). Based upon her failure to complete the tasks and stamping of the AIIs, SOTs, and M&C logs, the hearing examiner found that Ms. Boarman had falsified her employer's records. (R. 565). The examiner clearly inferred her intent to falsify from her statements, the stamping of the documents, and the defects of the WRA-15 and WRA 5-8 which she had allegedly inspected and torqued.

V. Conclusion

Unemployment insurance benefits are intended for those who are not responsible for their own unemployment. Section 8-102. Under the Maryland Unemployment Insurance Law, a former employer, through its tax contributions or reimbursements, is asked to bear the financial burden of a former employee's unemployment when the employer bears some responsibility for creating the unemployment. Benefits are provided for who quit their jobs due to intolerable conditions or those who are laid off due to lack of work. In the instant case, the employer bears no responsibility for claimant's unemployment. Because claimant stamped assembly inspection instructions, shop order travelers, and the

M&C log, indicating completion of the assigned tasks, without actually torquing and torque sealing the units in question she violated her employer's policies and falsified records. Thus, claimant is not within the protective ambit of the compensation statute. The Board acted properly in disqualifying the claimant from receiving benefits.

Based upon the aforegoing and the record as a whole, it is respectfully requested that the decision of the Board of Appeals be affirmed.

Respectfully submitted,

J. JOSEPH CURRAN. JR.
Attorney General of Maryland

MICHELE J. McDONALD
Staff Attorney
217 E. Redwood Street, Room 1101
Baltimore, Maryland 21202
(410) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 1994, a copy of the aforegoing Memorandum in Support of the Board of Appeals was mailed, postage prepaid, to Stephen D. Langhoff, Langhoff & Wacker, P.A., 207 E. Redwood Street, Baltimore, MD 21202.

MICHELE J. McDONALD

CECELIA BOARMAN	*	**IN THE**
Appellant	*	**CIRCUIT COURT**
v.	*	**FOR**
LITTON SYSTEMS, INC., AND BD. OF APPEALS, DEP'T OF ECON. & EMP'T DEVELOPMENT	*	**BALTIMORE CITY**
Appellees	*	**CASE NO. 93308008/CL172143**

* * * * * * * * * * * * *

entered by Clerk on 5/14/94

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MEMORANDUM OPINION AND ORDER

Introduction

Cecelia Boarman ("Boarman" or "Appellant") has appealed from the decision of the Board of Appeals (the "Board") of the Department of Economic and Employment Development ("DEED"), dated August 11, 1993. Originally, a DEED Claims Examiner had found Boarman guilty of simple misconduct and thus ineligible for benefits for seven weeks. A Hearing Examiner reversed, concluding that Boarman had been discharged for two events constituting gross misconduct connected with her employment, within the meaning of Md. Lab. & Emp. Code Ann., § 8-1002(a)(1)(i) (1991). She was therefore denied unemployment insurance benefits. R.565-66.[1]

On appeal, The Board of Appeals summarily adopted the findings of the Hearing Examiner. R.573-74. Boarman has appealed to this court. The facts are rather tortuous and involved. From a review of the extensive and complicated administrative record, the following summary of relevant facts has been gleaned.

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[1]The record of the administrative proceedings before DEED has been sequentially numbered. References to the record will consist of the letter "R." followed by the page number of the record.

Factual Summary

For approximately 18 years, Boarman was a top-notch employee of Litton Systems, Inc. ("Litton"), a manufacturer of various types of equipment. Specifically, from September 22, 1975 to March 5, 1993, Boarman was an electromechanical equipment inspector for Litton. R.46. At the relevant times, Litton was a sub-contractor for Grumman Aircraft on a military procurement contract for the U.S. Navy. R.210, 250-51, 563. To direct its assembly personnel, Litton created a "Shop Order Traveller" ("SOT"), a list of each task to be performed during construction of a product. R.12, 95. When a task was performed, the employee completing the task was required to stamp the SOT with his/her employee number, indicating completion of the task. To direct its inspectors, Litton created a series of "Assembly Inspection Instructions" ("AII"), which listed each test to be performed by an inspector at each stage of production. R.53. When an inspector completed a specified test on the product's AII, the inspector also had to stamp the AII with his/her employee number, signifying that a given test had been completed and that the product passed the requisite inspection. R.54.

If, during inspection, the inspector noticed a discrepancy in the SOT, either the customer or the inspector had to complete an Inspection Card ("IC") and send the product back for reworking. R.114, 165, 167-69, 186, 198. Similarly, if the inspector found that the product had failed a test, the inspector was to prepare a Failure Test Report ("FTR") and send the unit back for reworking. R.75-77, 124, 180. Once the unit had passed the required tests and the inspector found no discrepancies on the SOT, the inspector then could stamp the AII and send the product to the next stage of production. Rework operations were not

stamped on the SOT (see, e.g., R.95, 98, 129, 182-83); consequently, when a unit undergoes multiple reworking, the evidence of it would only appear in the series of FTRs and ICs generated, not in the AII or SOT.

During construction, the customer had opportunities to inspect each unit. Accordingly, from time to time, representatives of the Federal Government and Grumman would conduct quality control inspections at Litton. R.565. If the representative approved, he/she would place a stamp on the SOT. R.129, 182-83, 369. If a failure or discrepancy arose following the representative's first approval, the failure was to be recorded on a System Malfunction and Correction Log ("M&C Log"), and the item had to be sent back for reworking. R.182-83, 372. In addition, when the unit later passed inspection, the inspector had to stamp both the AII and the M&C Log. R.183-84, 372, 405, 410-12, 535-39. Before the unit could proceed, the representative was obligated to approve the unit and stamp the M&C Log. R.182-83.

On February 8, 1993, as Boarman was working on a unit called a "WRA 15," Litton claims Boarman committed her first act of misconduct. Step 6.1.13 of the AII for this unit required her to "check [the] torque of cable connectors at 7-10 lbs." R.107.[2] In addition, Boarman was required to apply a "torque seal" after inspecting the unit. R.549-50.[3] After completing the test and the operation, she placed her stamp on the AII and SOT next to the

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[2]In other words, the operator had to test the tightness of a bolt securing a cable in place to ensure that it was sufficiently tight. R.64-65, 107-09.

[3]"Torque sealing" means that once the cable has been tightened, the inspector had to apply a liquid polymer, which dries to form a red seal. Breaks of the dried polymer seal are visible. R.65, 310, 370.

specified instructions. R.56-58, 107, 369. Subsequently, the unit passed through at least six subsequent inspections, albeit for other aspects of the unit. R.107-08, 160-66, 219, 369, 398. Then, on February 22, 1993, the representative from Grumman rejected the unit because nine of the cable connectors were not torqued or sealed. R.59-60, 114, 563. When Boarman's supervisor investigated, Boarman said she torqued but acknowledged she did not seal. R.115, 334. Although the supervisor instructed her to complete the seal, the supervisor did not initiate any formal disciplinary actions. R.61, 334, 563, 564.

The second incident occurred on February 26, 1993. Many employees did not come to work on that day, because of heavy snow. Consistent with her reliable work history, Boarman came to work; due to employee shortages, she had to perform inspections on units called "WRA 5-8" and "WRA 9." R.72, 75-78, 124, 404-05, 418. Previously, a defective unit purchased by Grumman had been returned, and workers had loosened several cables in order to fix the unit. R.124. When the unit reached Boarman, she asked Tom Burtis ("Burtis"), the representative of Grumman, to review the repair work. Anthony Yero ("Yero"), a Government representative, was also present. R.564. During the inspection, both representatives found that the cables were still loose, but had been sealed by Boarman. Id. When the representatives attempted to instruct Boarman as to the importance of torquing and sealing, Boarman "became belligerent and replied to Yero that 'torque seal was a waste of time and money.'" Id.; see also, R.127. Neither representative wrote up an IC or an FTR. Nor did either make an entry in the M&C Log indicating that the unit failed inspection. However, both Burtis and Yero wrote complaining memoranda to Boarman's supervisor. R.83-85, 116, 124A. In addition, Yero changed the inspection protocol to

require customer approval at every stage, at least until Litton had demonstrated that its quality control was trustworthy. R.81, 124A, 210-11, 239, 249-50. Nevertheless, Litton suffered no pecuniary loss, or any other measurable, tangible injury, as a result of Boarman's actions. R.211-12.

Scope of Review

Section 8-512(d) governs the standards of judicial review in connection with the administrative adjudication of unemployment insurance benefits. It provides in pertinent part:

> In a judicial proceeding under this section, findings of fact of the Board of Appeals are conclusive and the jurisdiction of the court is confined to questions of law if:
>
> (1) findings of fact are supported by evidence that is competent, material, and substantial in view of the entire record; and
>
> (2) there is no fraud.

See also, Bd. of Educ., Montgomery Co. v. Paynter, 303 Md. 22, 34-35 (1985) (interpreting predecessory statute, Md. Code Ann., Art. 95A, § 7(h) (1984)); Bd. of Appeals v. Baltimore, 72 Md. App. 427, 431-32 (1987); Adams v. Cambridge Wire Cloth Co., 68 Md. App. 666, 673-74 (1986).

Under the case law interpreting section 8-512(d) and its predecessor, "findings of fact made by the Board are binding upon the reviewing court, if supported by substantial evidence in the record." Baltimore, 72 Md. App. at 431. See also, Allen v. Core Target City Youth Program, 275 Md. 69, 74-75 (1975). Any inference to be drawn from the facts is also left to the agency. It is "the province of the agency to resolve conflicting evidence, but where

inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inference." Baltimore Lutheran High Sch. Ass'n, Inc. v. Emp't Security Admin., 302 Md. 649, 663 (1985).

The test is not how this court would resolve a factual dispute or questions of credibility. On review, this court may only determine "if, from the facts and permissible inferences in the record before the [Board], reasoning minds could reach the same result." Id. Consequently, this court may not reject the board's decision if it is supported by substantial evidence, unless the decision is wrong as a matter of law. Adams, 68 Md. App. at 673.

Furthermore, decisions of administrative agencies are prima facie correct. On appeal, the agency's decision must be viewed in the light most favorable to the agency. Paynter, 303 Md. at 35-36. See also, Bulluck v. Pelham Wood Apts., 283 Md. 505, 511-13 (1978). Accordingly, "the reviewing court should not substitute its judgment for the *expertise* of those persons who constitute the administrative agency from which the appeal is taken." Paynter, 303 Md. at 35 (emphasis in original).

Discussion

It is undisputed that the Board's decision was based solely on the events of February 8 and 26, 1993. R.563-65. The question presented by this appeal is whether Appellant's conduct on February 8 and 26, 1993 constituted gross misconduct, so as to disqualify her from the receipt of unemployment benefits.

The Board cited § 8-1002(a)(1)(i) to support a finding of gross misconduct.[4] Accordingly, this court's analysis must necessarily focus on that provision. The role of this court is to determine whether the evidence substantially supports the Hearing Examiner's factual findings that Boarman's conduct constituted gross misconduct.

The Maryland General Assembly and the Court of Appeals have clearly designated the Board as the proper body to apply § 8-1002(a)(1)(i) to the facts of each case. Nevertheless, there is no litmus test to determine what constitutes deliberate and willful misconduct within the meaning of § 8-1002(a)(1)(i). Emp't Security Bd. v. LeCates, 218 Md. 202, 208-09 (1959). What is required is "an utter disregard for the employee's duties and obligations to [the] employer and [conduct] calculated to disrupt the discipline and order requisite to the proper management and control of the company." Id. at 210; see also, Watkins v. Emp't Security Admin., 266 Md. 223, 227 (1972). What the court said in LeCates is certainly instructive here:

> Ordinarily a single instance of misconduct would not bring an employee within the disqualifying terms of [the statute]. The important element to be considered is the nature of the misconduct and how seriously it affects the claimant's employment or the employee's rights. Obviously no hard and fast rule can be made to cover such a situation.

LeCates, 218 Md. at 209.

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[4]Section 8-1002(a)(1) defines "gross misconduct" as conduct 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 . . . .

The conduct which courts have found to constitute gross misconduct varies from case to case. As examples, courts have found gross misconduct based on the categorical refusal of an employee to perform a duty directed by a supervisor (Saxton v. Commonwealth, Unemp't Comp. Bd. of Review, 455 A.2d 765 (Pa. Commw. 1983)); Dearolf v. Commonwealth, 429 A.2d 1284, 1286 (Pa. Commw. 1981)), the use of profanity and abusive language (Acord v. Labor and Industrial Relations Comm., 607 S.W.2d 174, 176 (Mo.App. 1980)), threats or actual violence toward a supervisor (Dep't of Econ. & Emp't Development v. Owens, 75 Md. App. 472, 477 (1988)), unauthorized use of an employer's motor vehicle (LeCates, 218 Md. at 211), and deliberate deception (Painter v. Dep't of Emp't and Training, 68 Md. App. 356, 359-60 (1986)).

When the employee's actions directly violate reasonable rules set by the employer, and that violation injures the employer's business interests, that conduct can also constitute gross misconduct. See, e.g., Dep't of Econ. & Emp't Dev't v. Hager, 96 Md.App. 362, 370-74 (1993) (employee's refusal to accept change in work hours due to claimed conflict with child care is gross misconduct where conflict was temporary and employee was unwilling to reschedule child care); Owens, 75 Md.App. at 477 (employee's threat to kill supervisor consituted gross misconduct); Burge v. Administrator, Div. of Emp't Security of the Dep't of Labor, 83 So.2d 532, 535 (La. Ct. App. 1955) (railroad conductor's failure to give timely warning of hazard to engineer in violation of clear rules constituted gross misconduct); In Re Collingsworth, 194 S.E.2d 210, 212 (N.C. 1973) (employee's failure to wear safety gear that federal law requires employers to provide, in direct violation of employer's safety rules, constituted a deliberate and willful violation of the employer's

interests); Irizarry v. Catherwood, 280 N.Y.S.2d 765, 766-67 (1967) (bank teller's failure to determine account balances before cashing customers' checks in violation of rules constituted gross misconduct).

In contrast, it is generally recognized that substandard work performance is not "gross misconduct" so as to disqualify an employee from receiving unemployment insurance benefits, if it is the result of inability or mistake. Keep v. D.C. Dep't of Emp't Svces., 461 A.2d 461, 463 (D.C.App. 1983) (ordinary negligence is not gross misconduct). A different result occurs, however, when a capable employee refuses to perform. An employee's refusal to apply herself where she is able can evidence an intentional and substantial disregard of the employer's interest. Rycraft v. United Technologies, 449 So.2d 382, 383-84 (Fla. App. 1984).

In Windsperger v. Broadway Liquor Outlet, 346 N.W.2d 142 (Minn. 1984), the Supreme Court of Minnesota, applying the same standard for gross misconduct as that applicable in Maryland, ruled that an employee's 15 to 20 minute temper tantrum did not constitute gross misconduct. The employee threw the tantrum in the back room of the store upon being informed of a change in her work schedule. In ruling that this conduct was not gross misconduct, the court focused on the lack of meaningful injury to the employer, noting that the employee's isolated outburst did not disrupt the store or otherwise adversely affect her employer's business. 346 N.W.2d at 145.

The question of what evidence supports findings of "willfullness" or "gross indifference" is a mixed question of law and fact. This court may only substitute its judgment on the law for that of the Hearing Examiner if the factual findings made by the

Hearing Examiner inexorably lead to one legal conclusion, and the Hearing Examiner failed to reach that one conclusion. Cf., Ramsay, Scarlett & Co., Inc. v. Comptroller of the Treasury, 302 Md. 825, 838-39 (1985) (substitution of judgment by the circuit court of an accounting issue decided by the tax court under Code, Art. 81, § 229(o)).

Most of the facts found by the Hearing Examiner are supported by substantial evidence in the record. As to the first incident, the Hearing Examiner was entitled to conclude that Boarman was responsible for carrying out the instructions embodied in the AAI for the WRA-15 inspection before she placed her stamp on the AII. The testimony in the record further supports a conclusion that no one else handling the unit after Boarman and before the customer's inspection had any responsibility to recheck the torque or apply torque seal. R.158-67. Petitioner admitted not putting on torque seal, in violation of SOT instruction 3.2. R.115, 549. Moreover, she was specifically told more than once about the importance of ensuring that the cables were properly secure and torque sealed. R.61, 115, 117, 334, 353. Additionally, Boarman had some 18 years of experience as an inspector, and so was familiar with the equipment and the procedures. R.64.

The reasonableness of Litton's rules is clear from the consequences of Boarman's violations: Boarman's acknowledged failure to torque seal the cables on February 2 and her improper torque sealing on February 26 directly undermined Litton's reputation for quality manufacturing, and Litton's quality control procedures were overridden by an irate customer until such time as Litton had reestablished its trustworthiness. R.81-82, 124A. On top of this, Boarman's rude and insubordinate remarks questioning the necessity for a quality control measure desired by Litton's customer jeopardized Litton's relationship with its

customers. Consequently, the Hearing Examiner was entitled to find that Boarman's second failure to torque, in light of her outburst questioning the importance of the torque seal, was a breach of Litton's established rules which constituted misconduct.

Nonetheless, at least one of the facts found by the Hearing Examiner is unsupported by the evidence. That finding reads as follows: "Henceforth, the Federal government required more involvement in the inspection processes *which proved to be more costly to the employer.*" R.564 (emphasis added). To the extent that Litton suffered a loss of good will and was required to expend additional labor on quality assurance, Boarman's actions could be characterized as "more costly to the employer." However, the record does not contain any evidence whatsoever to support a finding that Litton suffered pecuniary injury. On the contrary, Litton's representative, Vice President Steve Presti, testified--in response to a specific question posed by the Hearing Examiner--that Litton had suffered "no compensatory loss." R.211-12. In light of Litton's testimony, any finding of cost to Litton flowing from Boarman's conduct is not supported by the evidence in the record. Further, this court cannot determine the extent to which the Hearing Examiner's determination as to gross misconduct was predicated on the erroneous factual conclusion of pecuniary injury to Litton.

Even if the Hearing Examiner did not rely on the finding of injury, her leap from misconduct to gross misconduct is legally unsound. The Board does not dispute that Boarman's 18-year employment record was exemplary. See, e.g., R.15-18, 337-38. Yet the Board has not addressed or explained how Boarman's actions on February 8 and 26, 1993 constitute the same degree of willfullness, wrongful intent or magnitude of impact on the employer's reasonable business interests as an employee's total refusal to change her personal

schedule (Hager, 96 Md. App. at 370-74), an employee's threat to kill a supervisor (Owens, 75 Md. App. at 477), an employee's failure to operate a train safely (Burge, 83 So.2d at 535), an employee's acting so as to place the employer in violation of federal law (Collingsworth, 194 S.E.2d at 212), or an employee's failure to protect the employer's assets, (Irizarry, 280 N.Y.S.2d at 766-67). All the Board has presented as to Boarman's deliberateness or willfullness is the finding as to Boarman's belligerance toward Burtis and Yero. However, any rudeness or bad manners toward customers does not have any relationship to the Hearing Examiner's holding that Petitioner willfully and deliberately violated Litton's interests by improperly inspecting the products. That Boarman acted in violation of Litton's reasonable interests is clear; that she exhibited "deliberate and willful disregard of Litton's standards of behavior," as required by § 8-1002(a)(1), is not.

Conclusion

Inasmuch as the Hearing Examiner's ultimate decision may have been based on a fact that is not supported (and, indeed, is refuted) by evidence in the record, the decision cannot stand. Also, the court believes, as a matter of law, that Boarman's conduct amounted to ordinary misconduct, rather than gross misconduct. Based on the foregoing, it is, this _____ day of July, 1994, by the Circuit Court for Baltimore City, ORDERED that the decision of the Board be, and the same hereby is, REVERSED, and that this case be REMANDED for further proceedings consistent with this Opinion.

Judge Ellen L. Hollander

cc: Michelle McDonald, Esq., Assistant Attorney General

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Ellen L. Hollander

Judge Ellen L. Hollander

cc: Stephen Langhoff, Esq.
Michelle McDonald, Esq., Assistant Attorney General

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 06/10/94

PRESIDING JUDGE Hollander

COURTROOM CLERK Snowden

STENOGRAPHER J. Trowbridge

ASSIGNMENT FOR THURSDAY JUNE 23, 1994

CASE NUMBER - 93308008
CASE TITLE - BOARMAN VS LITTON SYSTEM INC CL172143 CL
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - COURT TRIAL - FAST TRACK

~~WEISKITTEL, LYNN~~ Michelle McDonald DEFENSE ATTORNEY 333-4813
LANGHOFF, STEPHEN PLAINTIFF ATTORNEY 625-5080

6/[illegible]/94 - Held sub curia for decision.

TYPE OF PROCEEDING: (____ JURY) (✓ NON-JURY) (____ OTHER)

DISPOSITION (CHECK ONE)

(____ SETTLED) (____ CANNOT SETTLE) (____ NEXT COURT DATE)
(____ VERDICT) (✓ REMANDED) (____ NON PROS/DISMISSED)
(____ JUDGEMENT NISI) (✓ ORDER/DECREE SIGNED) (____ OTHER)
PLEASE EXPLAIN:
(____ JUDGEMENT ABSOLUTE) (____ ORDER/DECREE TO BE SIGNED)
(____ POSTPONED) (____ MOTION GRANTED)
(____ SUB CURIA) (____ MOTION DENIED)

JUDGE SIGNATURE Ellen Hollander DATE 7/29/94

CIRCUIT COURT FOR ~~BALTIMORE~~ CITY DATE PRINTED 06/10/94

PRESIDING JUDGE Hollander

COURTROOM CLERK Snowden

STENOGRAPHER J. Trowbridge

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~~WEISKITTEL, LYNN~~	Michelle McDonald	DEFENSE ATTORNEY	333-481
LANGHOFF, STEPHEN		PLAINTIFF ATTORNEY	625-508

6/[redacted]/94 - Held sub for decision.

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY ✓) (____ OTHER)

DISPOSITION (CHECK ONE)

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(____ JUDGEMENT ABSOLUTE)	(____ ORDER/DECREE TO BE SIGNED)	
(____ POSTPONED)	(____ MOTION GRANTED)	
(____ SUB CURIA)	(____ MOTION DENIED)	

JUDGE SIGNATURE Ellen Hollander DATE 7/29/94

CIRCUIT COURT ~~ALTI~~ DATE PRINTED 06/10/94

PRESIDING JUDGE Hollander

CLERK Snowden

TENCGRAPHER J. Trostbraye

ASSIGNMENT FOR THURSDAY JUNE 23, 1994

CASE NUMBER
TITLE - LITTON SYSTEM INC CL172143 CL
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - [illegible] TRIAL - FAST TRACK

~~KEISKITTELY LYNN~~ Michelle McDonald
LANGHOFF, STEPHEN DEFENSE ATTORNEY 333-4
PLAINTIFF ATTORNEY

6/[illegible]/94 - Held sub for decision.

PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

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JUDGE SIGNAT[illegible] 6/24

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ESIDING JUDGE .....

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CGRAPHER .....

ASSIGNM R THURSDAY , 1994

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ATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
EEDIN - COURT TRIAL - FAST TRACK

~~WEISKITTEL, LYNN~~ ANGHOF PLAI TORNEY 333-481
ATTORNEY 625-508

PROCEEDING: (____ JURY) (✓ NON-JURY) (____ OTHER)

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(____ JUDGE) (✓ ORDER/DECREE SIGNED) (____ OTHER) PLEASE

__ JUDGE (____ SIGNED)

((____)

__ SUP (____ MOTION DENIED)

SIGNAT DA

LAW OFFICES
LANGHOFF & WACKER
A PROFESSIONAL CORPORATION
TENTH FLOOR
207 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202

STEPHEN D. LANGHOFF

TELEPHONE (301) 332-1010
TELECOPIER (301) 332-4511

May 17, 1994

Clerk
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Baltimore, Maryland 21202

Re: **Cecilia Boarman v. Litton Systems, Inc., et al**
Civil Action No. 93308008/CL172143

Dear Clerk:

Enclosed please find the original Memorandum In Support of Appellant's Appeal in connection with the above entitled case.

Thank you for your assistance.

Sincerely yours,

Stephen D. Langhoff

SDL:tls
Enclosure
cc: Lynn M. Wieskittel, Assistant Attorney General
Ms. Cecilia Boarman

boarman/clerk.ltr

CECILIA BOARMAN	*	IN THE
Appellant	*	CIRCUIT COURT
vs.	*	FOR
LITTON SYSTEMS, INC., et al.	*	BALTIMORE CITY
Appellees	*	Civil Action No.
	*	93308008/CL172143

* *

MEMORANDUM IN SUPPORT OF APPELLANT'S APPEAL

Cecilia Boarman, by her attorney, Stephen D. Langhoff and Langhoff & Wacker, P.A., hereby submits her Memorandum In Support of her Appeal as required by Maryland Rule 7-207, and says:

STATEMENT OF THE CASE

On March 5, 1993 Ms. Boarman was fired by Litton Systems as a disciplinary measure.

On March 24, 1993 she was denied unemployment benefits for seven weeks because the Claims Examiner found that she was terminated "because of negligence of duties and rudeness toward co-workers and customers." Her actions were found to constitute "misconduct," but not "gross misconduct." (TR 20)

On March 29, 1993 she appealed the decision. On April 7, 1993 the Employer also appealed the decision. (TR 25)

Hearings were held on April 19, 1993, June 8, 1993 and July 8, 1993, before Hearing Examiner, Gail Smith, Esquire.

On August 11, 1993 Ms. Smith filed her decision finding that Ms. Boarman was discharged for gross misconduct in connection with the work, and denied all benefits. (TR 562)

On August 17, 1993 Ms. Boarman appealed that decision to the Board of Appeals. (TR 567)

On October 8, 1993, the Board of Appeals adopted the "findings of fact and conclusions of law of the Hearing Examiner" and denied her appeal. (TR 573)

On November 4, 1993 Ms. Boarman appealed that finding to this Court.

QUESTION FOR REVIEW

Whether the Claimant, Ms. Boarman, was discharged for gross misconduct or misconduct connected with the work, within the meaning of Sections 8-1002 and 8-1003 of The Labor and Employment Article, Annotated Code of Maryland.

STATEMENT OF FACTS

a. BACKGROUND

Since 1975, Ms. Boarman was an inspector for the employer, Litton Systems, who terminated her by a memorandum dated March 5, 1993. The employer manufacturers various electrical equipment, and in this particular case, was a sub-contractor for Grumman Aircraft. The latter had a contract with the Federal government. Representatives from both Grumman and the Federal government conducted inspections inside the employer's

facility, from time-to-time with respect to the quality of the employer's work. (Hearing Examiner's Findings of Fact, TR 563)

For purposes of assembling new build products, the employer sets forth its inspection procedures in various "assembly inspection instructions." ("AIIs") These instructions list each task to be performed by the inspector, line by line throughout the document. When an inspector finishes the inspection operation in question, she places a stamp with her assigned employee number at the end of the line which signifies that the inspector has completed the inspection operation in question. The employer has assigned the number "7554" to Ms. Boarman. (Hearing Examiner's Finding of Fact, TR 563)

Each unit being assembled is accompanied by a Shop Order Traveler (SOT) which lists each assembly operation to be performed, the location where it is performed, and a brief description of the operation. As each operation is performed, the employee who completes it places his/her stamp and usually the date on the SOT. A SOT travels with each unit from the beginning of assembly until completion. (Agency Record Exhibit at TR 11, and 19; See also Claimant's Exhibit 1 at TR 369) When a unit passes its tests, the unit's SOT is stamped indicating approval. (See TR 12 and/or 19)

When a discrepancy is discovered during an inspection operation, the inspector writes an Inspection Card (IC) noting the discrepancy, and sends the unit back for the work to be done correctly. The inspector does not do the correction work herself. (TR 59-60, 327 Employer Exhibit 2 at TR 114)

At different stages in the assembly, various tests are performed. Inspection procedures differ for units being assembled and those which experience test failures. If a unit fails a test, a Failure Test Report (FTR) is prepared, and the unit is sent back to the assemblers and reworked. (Employer Exhibit 6; TR 75, 76) If the unit passes the test, SOT are stamped and it moves to the next operation.

As part of the overall inspection process a unit is submitted to a customer for approval prior to the MTP test. The customer signifies his approval by placing his stamp on the SOT. At this point, he has "bought" the unit, and so his approval is necessary following additional tests. (See Employer Exhibit 1 and TR 12 and/or 19)

After the customer has "bought" the unit, when failures are discovered an the FTR is prepared and the discrepancy is recorded on a System Malfunction and Correction Log ("M&C Log"). (Claimant's Exhibit 3 at TR 372) The defective unit is sent back for "rework". After the required rework is done on the unit, the unit is sent to be inspected again. If the inspector finds a discrepancy in the rework, she writes an IC and records it on the M&C Log. If she approves the rework, she stamps the M&C Log, and then presents it to the customer for his inspection. The customer either approves the rework and stamps the M&C Log, or the customer disapproves the rework and writes an IC, and the unit is returned to manufacturing for rework. The unit's SOT continues with it during the testing and rework functions, but the rework functions are not stamped on the unit's SOT. (See Employer Exhibits 6 and 11, Claimant's Exhibits 3 and 5)

When the unit requiring rework finally passes the test (or at each stage of the rework process if a unit continues to malfunction) a customer's inspector stamps the M&C Log indicating that the unit is ready to continue its journey toward becoming a final product. (See Claimant's Exhibits 3 and 5)

There are no assembly inspection instructions (AII's) for the test rework inspections, and an inspector does not stamp each function performed on the unit's AII. Instead, the inspector stamps the Failure test report (FTR) and the System Malfunction and Correction Log (M&C Log). The inspector works to the FTR and M&C Log, rather than to the AII. (TR 405)

The employer had issued AII 255 (assembly inspection instruction) for the WRA 15. This assembly inspection instruction set forth the various steps the inspector is required to perform in inspecting a WRA 15 unit. Under Operation 035 of AII 255:

> Step 6.1.11 requires:
> Verify torque of RF termination (38130 and 90' angle adapters (3) at 7-10 in lbs.; and
>
> Step 6.1.13 requires:
> Check torque of cable connectors at 7-10 lbs.
> (Employer Exhibit 1 at TR 107)

The employer also had issued assembly inspection instructions for "Torque Seal Application" in 1985. AII 97 (Employer's Exhibit 18 at TR 549) says:

> 3.0 Procedure
>
> 3.1 The Torque Seal is to be applied to all SMA Connectors only after the connector has been inspected and accepted

for the proper tightness, after MTP has been performed. For E2C and TEREC programs, See 3.1.1

3.1.1 All WRA's and LRU's on E2C and TEREC will be torque sealed prior to MTP test, with the exception of WRA 13 (E2C) which is sent to MTP test with SRA's removed

(Employer Exhibit 18 at TR 549, 550)

The Hearing Examiner quoted in her decision the following portions of that AII:

> "... the torque seal applied to all cable connectors only after the connectors has been inspected and accepted for the proper tightness... These instructions were applicable to "WRA's...on E2C..." (Hearing Examiner Finding of Fact at TR 563)

The employer had distributed these instructions to all employees for their benefit. (Hearing Examiner Finding of Fact at TR 563) The Hearing Examiner's quotations ellipsised all references to the MTP test in Section 3.1.1 which is the applicable procedure for WRA units in the E2C project.

Ms. Boarman has been an inspector for the employer for 18 years. She has been assigned as an inspector on various projects. Normally an inspector is assigned to inspect units for the same project. Ms. Boarman inspected regularly for the E2C project only during 1981 to 1984. Thereafter she worked on various projects including the Clean Room (1984-1487). EA-6B project (1987-1990), PC Board Area projects (1990-1993), and finally the BLD system. She was a regular inspector for the BLD system in February,

1993. At times she was called on to inspect other project units. (TR 354, 388, 389)

Throughout her tenure she was a good employee, a "very good inspector" according to her supervisor, Mr. Stanton." (TR 337) (See also her Performance Appraisal at TR 15-18) She did, however, have one prior disciplinary action in 1991 involving another employee. This action did not involve her inspection work. (TR 4)

During the course of a day, many units are inspected, involving multiple inspection steps for each unit inspected. (See AIIs)

b. FIRST INCIDENT

On February 8, 1993, Ms. Boarman inspected a WRA 15 unit. (Employer Exhibit 1) An AII 255 accompanied it. She affixed her stamp to steps 6.1.1 through 6.1.13 of Operation 035 indicating she had performed all thirteen of the designated inspection steps. She also affixed her stamp to the SOT for this unit indicating Operation 035 had been accomplished by her. (See Employer Exhibit 1 and SOT at TR 12 and/or 19)

As indicated on the SOT, the WRA 15 unit went to Operation 040 for "Test/Cont" (Continuity test) after her inspection; then it was inspected by Inspector 04870 on February 10 as part of Operation 055. This inspection step required the inspector to: "Verify no damage. Loose or missing hardware after continuity (test)." Inspector 04870 stamped on the unit's AII 255 that he completed this inspection. The unit then went to Operations 060, 065 (2/17/93); 066 (a Quality Engineer inspection); 068 assembly; and another inspection by 04780 on February 21, 1993.

On February 22, 1993, Mr. Burtis, the representative from Grumman, rejected on behalf of his company "WRA 15 (20E015-4, S/N 1783)" because nine of the cable connectors were not "torqued or sealed." Mr. Burtis wrote his findings in an IC (See Employer's Exhibit 3). (Hearing Examiner Finding of Fact at TR 563)[1]

On February 23, 1993, the claimant's immediate supervisor, Mr. Stanton, responded to a Sell Off Room Discrepancy that had been issued by Mr. Matutu (QE43) (Employer's Exhibit 3 at TR 115) regarding this incident. The supervisor stated in the notice that the inspector, meaning the claimant, said she checked the torque, but did not torque seal the connectors. The supervisor wrote that he took the following corrective action "the inspector was instructed to seal each connector as she torque, this way they would not forget they were torqued and sealed." (Employer's Exhibit 3 at TR 115) (Hearing Examiner Finding of Fact at 563, 564)

No disciplinary action was initiated as a result of this incident at that time.

c. SECOND INCIDENT

On or about February 24, 1993, a high band receiver WRA 5-8 (piece/and 20E005-5, S/3367) failed test because of a Band 4 failure (ETR F01360). (Hearing Examiner Finding of Fact at TR 563) FTR (Failure Test Report) No. 01360 was prepared, and an M&C Log was started for the unit. (Employer's Exhibit 6, and Claimant's Exhibit 2) In trying to fix the defect,

[1]Note that the Hearing Examiner's Finding of Fact at TR 563 refers to a "Seller Corrective Report" and Employer's Exhibit 4 as reference to this event. In fact, Mr. Burtis only write an IC regarding this incident not a "Seller Corrective Request."

which the claimant did not have anything to do with, the employees working for Litton, loosened four cables to remove the Band 4. The employer performed the repair work in question which was then sent to the claimant for her inspection. She approved the rework and stamped the FTR. Upon retesting, a different problem was discovered, and a second FTR, No. 01362, was prepared on February 26, 1993, and a second entry was recorded on the M&C Log. (Employer Exhibit 6, and Claimant's Exhibit 2 at TR 372) The rework required by FTR 01362 was done, and sent to Ms. Boarman for inspection after a cable set was replaced. Ms. Boarman stamped the FTR indicating that the cable set was replaced. (Employer's Exhibit 6)

The individual who normally would have re-inspected this particular piece of equipment were not present on the date in question. (Hearing Examiner Finding of Fact at TR 564) February 26, 1993 was a snowy day in Baltimore, and most Litton System employees did not report to work. One of these was Inspector 04870 who normally inspects E2C projects, including WRA 5-8 units. (Hearing Examiner Finding of Fact at TR 564)

Ms. Boarman was able to brave the elements, and she dutifully reported for work, only to find that Inspector 04870 was not there. Apparently a few other employees also arrived at work, and so units were assembled and had to be inspected. Ms. Boarman was pressed into service to inspect E2C projects again, including the WRA 5-8 and WRA 9. Sometime after 3:00, 3:30 p.m. of that snowy Friday workday, Ms. Boarman received a WRA 5-8 and a WRA 9 unit to inspect. She did so.

In an effort to get the units completed before her shift ended, she called Mr. Burtis to inspect the WRA 9 unit, and the WRA 5-8 unit which was just put on her desk. (TR 413, 414) The government representative, Mr. Yero, also happened to be present at that time and attended the inspection by Mr. Burtis. During the inspection, both Mr. Burtis and Mr. Yero claim they found that the cables were loose, but that the cables in question were torque sealed indicating that the tightness of the cable connectors had been verified by the inspector. (Hearing Examiner's Finding of Fact at TR 564)

Mr. Burtis and Mr. Yero testified that the cables needed tightening of three turns with a torque wrench. Ms. Boarman testified the cable was only slightly loose, and that the required tightening did not break the torque seal which was on the cables. (TR 415) A dispute exists as to whether or not a torque wrench at her station. All agree that Mr. Burtis did tighten the loose cables.

Mr. Burtis did not write an IC indicating rework was necessary, a step required if the unit fails his inspection. (TR 416) Nor did he make an entry on the M&C Log indicating the unit failed his inspection. (TR 12) Nor was a third FTR written, indicating further rework was needed to tighten the cables and re-apply torque seal.

Mr. Burtis stamped the M&C Log, as did Ms. Boarman, and the unit proceeded to test on the following Monday, March 1, 1993. (Claimant's Exhibit 2 at TR 372)

Both Mr. Burtis and Mr. Yero tried to speak to the claimant about the importance of her job duties whereupon Mr. Yero spoke to the

Claimant. Ms. Boarman mentioned to Mr. Burtis that she thought that "torque seal was a waste of time and money." (Hearing Examiner Finding of Fact 564)

Contrary to the Hearing Examiner's Finding of Fact (TR 564), the particular AII for this unit was not produced at the hearing, and there is no indication that Ms. Boarman stamped the AII indicating she had checked the torque and sealed the cable. The employer's "assembly inspection instructions" for the WRA 5 (See Employer's Exhibit 5) required verification of torque of 7-10 lbs., at line 6.1.15 of the instructions. However AIIs are not used for testing malfunction rework inspections. Employer's Exhibit 5 is an AII for a WRA 5-8 but was not the AII for the unit in question. AIIs are not stamped for units which fail tests and require rework. The correct paper work is the M&C Log and FTRs. When the test operation is completed successfully the SOT is stamped. Since Ms. Boarman was not involved in any phase of the "new build" assembly of this unit, her stamp does not appear on the SOT for the WRA 5-8 unit in question. Mr. Burtis stamp does appear on the SOT, although it is unclear for which operation. (Employer's Exhibit 5, 11)

When Mr. Burtis left the WRA 5-8 inspection, he immediately went to inspect another unit which had been inspected by Ms. Boarman, a WRA 9 unit. No problems were found with the inspection of that unit.

Mr. Yero however wrote a Corrective Action Request to Mr. Mann, (who was Mr. Presti's subordinate) requiring corrective action. When Mr. Burtis found out on Monday, March 1, 1993 that Mr. Yero had written a Corrective Action Request for the incident, he wrote a Seller Corrective

Action Request regarding this incident. (Employer's Exhibit 4 at TR 116 and 7 at TR 124A)

Mr. Presti, Vice President of Product Assurance, was put on the hot seat as a result of the Corrective Action Requests. He reacted by terminating Ms. Boarman on March 5, 1993.

As a result of these two incidents, particularly the latter incident, the government refused to accept or sign off, after making perfunctory government inspections. The Hearing Examiner found that "henceforth, the Federal government required more involvement in the inspection processes which proved to the employer that it would not conduct "in-process inspections within the employer's plant." (Hearing Examiner Finding of Fact at TR 564) However, the customer's always had the right to conduct such "in-process inspections with the employer's plan."

STANDARD FOR UNEMPLOYMENT COMPENSATION BENEFITS

This appeal is from a finding by the Hearing Examiner that Ms. Boarman was fired for gross misconduct. Gross misconduct means:

(1) 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; and
(2) does not include:
  (i) aggravated misconduct, as defined under Section 8-1002.1 of this subtitle; or

(ii) other misconduct, as defined under Section 8-1003 of this subtitle.

L&E Article Section 1003, Annotated Code of Maryland

The Claims Examiner found Ms. Boarman was fired for "misconduct" which is not defined in the statute, except to say it is not gross misconduct or aggravated misconduct. Section 1003, L&E Article.

Only a few cases discuss what constitutes gross misconduct. The leading case is Employment Security Board of Md. v. Lecates, 202 Md. 145, 145 A.2d. 840 (1958), where the Court observed that "deliberate and willful" misconduct is to be distinguished from "misconduct of a lesser degree," and that it may vary with each particular case. The Court noted that it is more than "substandard conduct" and requires "a willful or wanton state of mind accompanying the engaging in substandard conduct." The Court also described gross misconduct as:

> "deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee constitutes misconduct. * * * [W]illfulness exists where the injury to the employer, although realized, is so recklessly disregarded that, even though there is no actual intent, there is at least a willingness to inflict harm, or a conscious indifference to the perpetration of the wrong; in such case a constructive intention is imputable to the employee." 81 C.J.S. Social Security and Public Welfare Section 162.

And the Lecates court approved this language:

> "Willful misconduct' is not defined in the statute [nor is it in the Maryland statute],

> but this Court has held it to comprehend an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations to the employer."

From the above it is clear that an element of deliberate intention to harm the employer is necessary for a finding of gross misconduct.

DISCUSSION

FIRST INCIDENT

The Hearing Examiner found that Ms. Boarman "falsified" a document by stamping the AII for WRA 15 indicating that she had certified the torque on the WRA 15 unit's connectors. Mr. Burtis testified that when he checked the unit, nine connectors were loose, and therefore he rejected the unit, and sent it back to be redone. Mr. Burtis wrote on IC (Inspection Card) as a result of his findings. The Hearing Examiner also found that Litton had published a separate AII in 1985 stating that when cables are torqued, they are to be torque sealed. Thus the Hearing Examiner concluded, Ms. Boarman, by stamping the AII indicating she had inspected the unit, was wrong in either or both not verifying the torque, or not applying torque seal but indicating on the AII that she had.

Following Mr. Burtis' rejection of the unit and writing the IC, Mr. Matutu, Litton's Quality Engineer 43, wrote a Corrective Action Request

regarding this incident. Ms. Boarman's supervisor, Mr. Stanton, then instructed Ms. Boarman that torque seal is to be applied after the cable's torque is verified.

The above facts do not tell the entire story because they ignore several crucial factors.

Ms. Boarman testified that she worked to the AII's cited by Litton, and that she followed the correct procedures.

The critical factors overlooked involve the length of time between her inspection and the discovered discrepancy during which several others handled and inspected the unit, and a determination of whether or not Ms. Boarman was required to apply torque seal on February 8, 1993.

The official documents reveal that on February 8th, 1993, Ms. Boarman inspected the WRA 15 unit and stamped that she performed all of the procedures in Operation 035, including Steps 6.1.11 and 6.1.13, both of which require she verify the torque to be "7 -10 in lbs." Neither 6.1.11 nor 6.1.13 state she is to apply torque seal following verification of torque. However, Ms. Boarman testified she knew of the AII regarding the application of torque seal, but did not apply torque seal as part of operation 035 because that AII did not require that torque seal be applied at steps 6.1.11 or 6.1.13. Litton contended otherwise, and the Hearing Examiner found otherwise. They are wrong as shown below.

AII 97 (later 031) which the employer relies on for its assertion that Ms. Boarman was to apply torque seal at Steps 6.1.11 and 6.1.13 of Operations 035 states at Paragraph 3.1.1 that for WRA units of E2C projects the torque seal is to be applied "prior to the MTP Test." (Normally it is applied after the MTP test.) (Employer Exhibit 11 at TR 549)

The official document detailing the various operations that the WRA 15 goes through is the SOT (Shop Order Traveler). This unit's SOT which accompanied the WRA 15 unit in question shows the unit went through the following steps during its assembly:

Location	Operation	Routing	Date	Stamp(s)
541	020	?	2/1/93	465 /POA70
450	030	Assemble		161
459	035	AII 255		7554
901	040	Test/Cont	2/8/93	Test Stamp 17
459	055	AII 255	2/10/93	04780
450	060	Assemble		161
459	065	AII 255	7/93	04870
459	066	Customer Review	2/22/93	QE 43
450	068	Assemble	2/23/93	?
439	068/9	AII 255	2/23/93	04870
901	070	Test/MTP	2/25/93	Test Stamp

(See TR 12 and/or 19)

AII 255 for the unit in question (Employer Exhibit), indicates that Ms. Boarman's performed her inspection (Operation 035) on February 8, 1993.

The unit's SOT (TR 12 and/or 19) shows that the operation immediately following Ms. Boarman's inspection was "Test/Cont," (i.e. Continuity Test) not the MTP test. In addition, the WRA 15 unit was inspected by 04870 following the Continuity test, and prior to the MTP test. This inspection requires the inspector to check for all "loose or missing hardware" after the Continuity test. (See Employer Exhibit 1 at TR 108) Thereafter, the unit was handled by other workers doing assembly work.

Then it was inspected again by 04870; then it went to a customer review where Quality Engineer, Mr. Matutu (QE43) inspected it. Thereafter Mr. Burtis discovered the loose connectors on February 22, 1993. So five steps, including one passed test, three inspections and one assembly occurred after Ms. Boarman performed Operation 035 and before Mr. Burtis discovered any loose connectors. Is it possible that something as obvious as loose connectors without the "required" torque seal hadn't been picked up or noticed in the meantime? Or is it more likely that during those operations, especially the assemblies, the connectors came loose. In any event, no substantial evidence exists showing she did not verify the torque as required by Steps 6.1.11 and 6.1.13 of Operation 035 of AII 255, a finding which is necessary if she is to be held accountable for the loose connector.

Besides the question of when the connectors came loose, a real question exists as to whether or not Ms. Boarman was supposed to torque seal the connectors when she performed Operation 035.

Beyond question, AII 255 does not require the application of torque seal at that time. AII 031[2] instructs the inspector as to when to apply torque seal, and Ms. Boarman testified she worked to that AII, and Litton's people testified she was supposed to work to it.

The issue though is when is the torque seal to be applied? AII 97 (later 031) in instruction 3.1.1 provides that the torque seal is to be applied "prior to the MTP Test."[3] While "prior to" could mean at any time in the

[2]The torque seal application in effect on February 26, 1993 was AII 97 (See Employer Exhibit 18 at TR 549.) However, subsequent to this incident, Litton published no less than four AIIs attempting to clarify the point. On March 3, 1993, on March 5, 1993, on March 9, 1993, and on March 15, 1993 Litton published AII 031 for Torque Seal Application. (See Employer's Exhibit 19, at TR 551-558) Litton apparently had difficulty with punctuation and identifying what units to which Section 3.1.1 applied. It did not however change its position that for WRAs in the E2C project, torque seal is to be applied "prior to the MTP Test," not the Continuity Test.

[3]Note that this is an exception to the general rule in Section 3.1 which states that the torque seal is not normally applied until after the MTP Test.

operation, it also could mean that the connectors are not to be torque sealed immediately prior to that test. If Litton wanted torque seal applied to the connectors at operation 035, it could have required it in either of two ways:

(1) Say so in AII 255 at step 6.1.11 and 6.1.13 by adding after the words verify torque to 7-10 lbs., "and apply torque seal"; or

(2) In AII 031 state that for WRA units in E2C projects, apply torque seal "immediately prior to Continuity Test," rather than say "prior to MTP test."

Thus an inspector is left to fend for herself to determine when the proper time is to apply the torque seal. The instructions are very precise with regard to all other steps in the inspection, which contrasts sharply with the impreciseness on this point. In light of the distinct lack of clarity given the inspector in the instructions, and the opportunity for others to have caused (or discovered) the loose connections prior to Mr. Burtis, it is unconscionable for Litton to lay the blame on Ms. Boarman, especially since she was not regularly assigned to inspect E2C project units and had not been for nine years.[4]

While one cannot dispute or refute at this time that the connectors were loose, one has to question whether the correct employee was disciplined, especially since Inspector 04870 and Quality Engineer 43 both inspected and passed the unit after Ms. Boarman's inspection, and after the unit went through the Continuity Test.

SECOND INCIDENT

[4] The reason why Ms. Boarman did not apply torque seal at operation 035, was because during the continuity test the tester determines whether the cables have been connected in the correct places. If they are connected incorrectly, an FTR is written to have them changed. If torque seal were already applied, this would hinder this operation as it would require the removal of torque seal, which had already been applied.

Because of the complexity of the assembly and inspection operation, the Hearing Examiner misunderstood the nature of what occurred, and what Ms. Boarman did and did not do. Although Ms. Boarman's job was an inspector on both February 22 and February 26, 1993, her duties on those days were different because the nature of the work she was inspecting was different.

With respect to the WRA 15 (the First Incident), Ms. Boarman was inspecting "new build" units. This required that she comply with an AII and a Shop Order Traveler. Each of these documents evidence her work with her stamp.

On February 26, 1993, however, Ms. Boarman was doing "test rework" inspections regarding the WRA 5-8. This required that she evidence her work by stamping the "FTR" and the "M&C Log."

It is within these documents that the true story is revealed.

As with the whole scenario a person's stamp indicates what was done.

The primary accusation against Ms. Boarman on February 26, 1993 was that she indicated that two connectors on the WRA 5-8 unit had been inspected and that she had determined that the appropriate torque had been applied because those connectors had torque seal on them.[5] Mr. Burtis testified that he determined the connectors had not been torqued properly, and that it took "at least three turns" to tighten them, which of necessity would break the torque seal. Mr. Burtis testified he did this, and then overheard Mr. Yero, who accompanied Mr. Burtis on the inspection, but who did not do any of the inspection himself, speak to Ms. Boarman about the importance of

[5] Note that this operation is after the MTP test, so torque seal should have been applied.

torque seal. The clear implication of his testimony being that the WRA 5 - 8 unit failed to obtain his approval because the connectors were loose.

Ms. Boarman on the other hand testified that the two connectors had torque seal, on them but were only minimally loose, i.e. only to the extent of 1/32". She testified that when the cables were torqued with Mr. Burtis present, the movement was so minute it did not cause the torque seal to break.

The critical evidence regarding Ms. Boarman's conduct lies in the "M&C Log" for that unit. (TR 372) This Log must record any rejections of rework. And if a unit is rejected, an IC is prepared, and recorded on the M&C Log. See TR 539 for an example of an M&C Log for a unit which failed several tests and inspections.

The M&C Log for the unit in question reveals that on February 26, 1993:

1. Mr. Burtis did not write an IC which would indicate he had rejected the WRA 5 - 8 unit, or that the unit failed to obtain his approval, and

2. Mr. Burtis stamped his approval of the unit, without sending it back for further rework. He passed it on for further testing.

The M&C Log and the unit's SOT (Employer's Exhibit 11 at TR 129) show that on Monday, March 1, 1993, the WRA 5-8 unit passed the test, and was approved by inspector 04870.

Also, FTR 1362 (TR 124) contains Ms. Boarman's stamp of approval. This approval was never retracted; and no further approvals were needed for that unit to proceed to the next step, testing.

If Mr. Burtis did not approve the unit late on Friday, February 26, 1993, the unit would have necessarily had to have gone back into rework, and have been presented to him again for his approval. All the official documents show that this never happened. Thus the unit presented to Mr. Burtis was properly reworked, inspected and passed on for testing.

Further evidence that Mr. Burtis did not disapprove of Ms. Boarman's inspection of the WRA 5 - 8 is that Mr. Burtis testified that he did not immediately initiate disciplinary action against Ms. Boarman. But he did so only when he learned on March 1, 1993 that Mr. Yero was upset, and that he had written a Corrective Action Request to Mr. Mann. It was only then that Mr. Burtis wrote up the incident, probably because he felt compelled to do so since Mr. Yero, his customer, was doing so. Mr. Burtis then had to fabricate that the unit required three turns, forgetting apparently that he had already placed his stamp of approval on the "M&C Log" approving the unit without further rework.

This of course leaves the question of why Mr. Yero would write up the incident on February 26, 1993. Mr. Yero did not himself inspect or handle the unit. He simply observed. And it was unusual to him to inspect units, that being Mr. Burtis' job. He just happened to be along that day.

Ms. Boarman confirms that Mr. Yero spoke to her, but emphatically denies that she was disrespectful to him. Certainly two people can leave the same conversation with differing opinions as to the other participants attitude, but that is a far cry from gross misconduct.

Although we don't know Mr. Yero's motivation for writing Mr. Mann about the incident, it could well be that he <u>simply</u> misunderstood what occurred on Friday, and took Ms. Boarman's statements the wrong way. In light of the evidence that the unit was approved, this is a logical explanation.

THE EVIDENCE DOES NOT SUBSTANTIATE A FINDING OF EITHER "GROSS MISCONDUCT" OR "MISCONDUCT"

General

Ms. Boarman worked at Litton for eighteen years as an inspector. She was a very good inspector who inspected thousands of units while there.

She was fired because of two incidents that occurred within a week (although actually the "inspections" for which she was cited occurred two and a half weeks apart, the problems only surfacing within the same week.)

In each instance a misunderstanding contributed to the escalation of it to the level of termination for disciplinary reasons, and a finding by the Hearing Examiner of "gross misconduct."

In the first incident, Ms. Boarman worked precisely to an imprecise AII. Neither step 6.1.11 nor 6.1.13 says to apply torque seal at that time. And AII 031 says specifically that torque seal is to be applied "prior to the MTP test." Ms. Boarman is accused of falsifying documents by stamping AII 255. During the fourteen days after she "verified torque" the unit passed through 5 operations, including the continuity test, and three inspections, including one by Mr. Matutu, the Quality Engineer, and one assembly If all nine connectors were loose and all nine connectors were without required torque seal as the unit went through each of these operations after Ms. Boarman's inspection on February 8, 1993, then a number of people are just as guilty as Ms. Boarman of gross misconduct for falsifying documents since they stamped the AII and the SOT indicating their approvals.

With respect to the second incident, her stamps are juxta - positioned with Mr. Burtis' stamp of approval. There can not be a

falsification of documents when the documents show the unit passed her inspection, the unit obtained Mr. Burtis' approval, and it passed the test on the next work day without further ado.

For the Hearing Examiner and this Court to find gross misconduct it must find that she acted willfully and deliberately to hurt her employer.

It is inconceivable that without motivation, a person who had inspected thousands upon thousands of units over eighteen years without any indication that her previous inspections were not done properly, would all of a sudden deliberately falsify her actions on two units.

People do make mistakes, that's why multiple inspectors are important elements in Litton's work. And because of its highly technical aspects, nothing is left to chance, and each step in the assembly and inspection process is precisely spelled out. If Litton wanted torque seal applied before the continuity test, it would have said so. If Mr. Burtis hadn't passed the WRA 5-8 unit, he would have noted it, and withheld his seal. But to conclude that Ms. Boarman acted deliberately to injure her employer is not justified by the evidence or common sense.

To the extent that mistakes occurred, Litton itself set the process in motion. In the first incident, its instructions are unclear as to when torque seal is to be applied.

In the second incident, Litton permitted or even required that a person who does not normally inspect WRA 5-8 units of the E2C program inspect one when she was assigned to the BLD system program. Litton then expected that she know all the procedures for that program. Ms. Boarman was at work on a snow day when the regular E2C inspector, 04870, stayed home. Then is fired because a mistake, or misunderstanding, occurred at the

very end of a trying day. She had to get both the WRA 5-8 and the WRA 9 inspected and out before the day ended. No one said she made any mistakes on the WRA 9 or accused her of deliberately hurting her employer there.

Why did Ms. Boarman get fired? Not because she deliberately hurt her employer, but because Mr. Yero, a customer, started a ball rolling that demanded that higher ups at Litton fix the blame on someone. As everyone knows when it comes to placing the blame, nothing goes downhill faster than blame. In this case Mr. Yero applied the heat to Mr. Mann, who looks to Mr. Presti, who looks to Ms. Boarman, who had no one below her to pass it on to. And blame does not go uphill. Ms. Boarman is fired. So Mr. Presti can then tell Messrs. Mann, Yero and Burtis that "corrective action has taken place," and presto, his problem is solved. Litton took action, and everyone is happy, except, of course, Ms. Boarman. But she's just an eighteen year, low level employee, and a convenient scapegoat.

In reviewing this case this Court must consider the context of Unemployment Insurance. Maryland is an employment-at-will state where "an employment contract of indefinite duration, that is, at will, can be legally terminated at the pleasure of either party at any time." Adler v. American Standard Corp., 291 Md. 31, 432 A.2d. 464 (1981).

Thus an employee has little, if any, protections against the whims of the boss. The Legislature passed the Unemployment Compensation laws to provide some safety net for employees who are terminated, so long as they do not voluntarily quit, or are fired because of misconduct, gross misconduct or aggravated misconduct.

The employee is necessarily at a gross disadvantage whenever he/she must challenge the employer's allegations. Usually something has occurred to trigger the termination. And when confronted with a hearing, the

evidence necessarily focuses on the alleged act, which triggered the firing. No time is spent detailing all the good work that the employee performed for the employer. If it did, the hearings process would break down. But the "system" assures that this doesn't occur by limiting the hearing to the allegations at hand.

So of necessity, the Hearing Examiner only hears the "bad stuff." But this is oftentimes taken out of context. It is always the focus of the Hearing. Since the employee is usually in the position of having to prove a negative, i.e. that something didn't happen, and simply can't take the time to explain all the aspects of her job, especially when one's employment covers 18 years and is extremely complex and detail oriented. An Examiner is simply incapable of understanding all the nuances involved in a complex situation, especially where the witnesses talk in the lingo of the workplace, and assume the Hearing Examiner understands it because the claimant and the employer both do.

That's what occurred here. A problem obviously occurred, and unfortunately the employer was required to do a better job in the future by the customer. The customer demanded that the employer "take corrective action." The employer's Vice President wasn't about to assume the blame or back his employee against his customer's accusations, so he looked for someone to offer up to the almighty customer. In this case he found Ms. Boarman who happened to be in the wrong place (at work) at the wrong time (at the very end of the work week when others had stayed home because of the snow) doing a technical job someone else regularly did (inspecting E2C projects instead of BLD projects, which she normally did.) She was an easy scapegoat, and in accordance with human nature, she suffered the consequences.

But did she deliberately and willfully intend to harm her employer. Of the thousands and thousands of inspection steps she did successfully, the focus was placed on two inspections of E2C projects which happened to occur within the same week. Coincidences do happen and there was no testimony she regularly failed to do her job. Yet, the Hearing Examiner found she deliberately and willfully falsified documents, and intentionally hurt her employer. The Hearing Examiner pointed to a "falsification of records" as evidence of deliberate and willful misconduct. But on close inspection of the facts and records, this charge evaporates.

In the first incident, the record which was stamped did not state that torque seal was required, and the other document is vague, to say the least, as to when torque seal is to be applied. ("Prior to MTP test" may or may not mean immediately prior to MTP test, or prior to both Continuity test and MTP test.) Ms. Boarman's stamp stating that she verified the connectors were torqued on February 8 was never proved to be false. That the connectors were loose two weeks later, after being handled by others is weak proof indeed that she didn't verify they were torqued as required. And if Ms. Boarman falsified records, did not Inspector 04870 and Quality Engineer 43 also.

The second "falsification" found by the Hearing Examiner simply didn't occur. Her reference to Ms. Boarman's stamp at procedure 6.1.15 of AII 031 (See Employers Exhibit 5 at TR 120), is simply not there. Ms. Boarman admits that she applied torque seal to the cables that day. The controversy is whether Mr. Burtis torqued the cables three turns, or whether they were torqued 1/32," not even enough to break the torque seal.

Evidence exists both ways on that point, but no evidence exists that Ms. Boarman deliberately and willfully acted to harm her employer.

As regards the finding that Ms. Boarman spoke belligerently to Mr. Yero, obviously he thought so. But how one interprets a conversation at the end of a long work week should not be determinative as to whether or not the person acted "deliberately and willfully." We all would wish that all employees and employers be perfect in all that they do and say. But no one is perfect. Even Jesus Christ lost his temper once in the Temple. Must Ms. Boarman be made to suffer the loss of unemployment benefits, in addition to the loss of her job, because Mr. Yero took Ms. Boarman's statement the wrong way?

The Legislature defined "gross misconduct" to include only gross or intentional wrong doing by an employee. Substandard performance is not enough. A person should not deprived of unemployment benefits simply because an employer reacts badly to a situation created by the employer itself. Here the evidence presented utterly fails to show that Ms. Boarman's conduct in February, 1993 amounted to deliberate and willful misconduct.

In fact, there is not even evidence that her conduct constituted "misconduct" within the meaning of the statue. Instead, she was the scapegoat for Litton Systems' failure to:

1. Write precise instructions as to who is to apply torque seal and when that is to be applied; and
2. Only permit inspectors to inspect those products which they are completely familiar with; and
3. Adjust the workload on a snow day to avoid situations where a substitute inspector is compelled to complete inspections; and

4. have the guts to stand behind its loyal employees against unfounded accusations by its "customers."

Although the customer is "always right", this does not mean that the employee is always wrong.

CONCLUSION

The evidence presented fails to show that Ms. Boarman's actions for which she was terminated constituted either misconduct or gross misconduct within the meaning of Sections 1002, or 1003 of the Labor and Employment Article.

Stephen D. Langhoff
207 E. Redwood Street
Baltimore, Maryland 21202
(410) 332-1010

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 17th day of May, 1994, a copy of the foregoing Statement of the Case was mailed, postage prepaid, to Lynn M. Wieskittel, Assistant Attorney General, 217 E. Redwood Street, Baltimore, Maryland 21202, Attorney for the Appellees.

Stephen D. Langhoff

boarman/brief.ple

CECILIA BOARMAN	*	IN THE
Appellant	*	CIRCUIT COURT
vs.	*	FOR
LITTON SYSTEMS, INC., et al.	*	BALTIMORE CITY
Appellees	*	Civil Action No.
	*	93308008/CL172143

* *

STIPULATION

The parties, by and through their attorneys, hereby stipulate that the times for filing the Memorandum and Responses shall be extended as follows:

Appellant shall have until May 16, 1994; and the Appellee shall have until June 21, 1994.

Lynn M. Wieskittel, Asst. Atty General
217 E. Redwood Street, 11th Floor
Baltimore, Maryland 21202
(410) 333-4813

Attorney for Appellees

Stephen D. Langhoff
Langhoff & Wacker, P.A.
207 E. Redwood Street
Baltimore, Maryland 21202
410/332-1010

Attorney for Appellant

boarman/stipulat.ple

CECILIA BOARMAN	*	IN THE
Appellant	*	CIRCUIT COURT
vs.	*	FOR
LITTON SYSTEMS, INC., et al.	*	BALTIMORE CITY
Appellees	*	Civil Action No.
	*	

* *

ORDER

In consideration of Appellant's Stipulation, it is this _____ day of _____, 1994

ORDERED, that this Stipulation be granted and the times for filing the Memorandum and Responses shall be extended as follows:

Appellant shall have until May 16, 1994; and the Appellee shall have until June 21, 1994.

_____
JUDGE

boarman/stipulat.ple

Circuit Court for Balto. City
111 N. Calvert St. Rm. 462
21202

Stephen D. Langhoff, Esq.
207 E. Redwood Street
Baltimore, Maryland 21202

Circuit Court for Balto. City
111 N. Calvert St. Rm. 462
21202

Lynn M. Weiskittel,
Asst. Atty. General
Michele McDonald, Staff Atty.
217 E. Redwood St. - 11th Fl.
Baltimore, Mryland 21202

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Cecilia Boarman

vs.

Litton Systems, Inc.

Docket:

Folio:

File: 93308008/CL172143

Date of Notice: 3-31-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 7th day of March Nineteen Hundred and ninety-four, I received from the Administrative Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39 **MARYLAND RELAY SERVICE VOICE 1-800-735-2258**

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Cecilia Boarman

vs.

Litton Systems, Inc.

Docket:

Folio:

File: 93308008/CL172143

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SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39 **MARYLAND RELAY SERVICE VOICE 1-800-735-2258**

(4) BZB

FILED

NOV 30 1993

CIRCUIT COURT FOR BALTIMORE CITY

CECILIA BOARMAN	*	IN THE
vs.	*	CIRCUIT COURT
LITTON SYSTEMS, INC.	*	FOR
and	*	BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	*	Civil Action No. 93308008/CL172143

ORDER OF COURT

The aforegoing Motion to Extend Time for Filing the Administrative Record having been read and considered, it is this 29 day of November, 1993, by the Circuit Court for Baltimore City, ORDERED:

That the time for filing the administrative record in the above-captioned appeal be extended and that the record in this case be filed on or before March 9, 1994.

JUDGE

ELLEN M. HELLER
JUDGE

3v3

CECILIA BOARMAN Appellant, v.	*	IN THE CIRCUIT COURT
LITTON SYSTEMS, INC.	*	FOR
and	*	BALTIMORE CITY
BOARD OF APPEALS, Department of Economic and Employment Development, Appellees.	*	Civil Action No. 93308008/CL172143

RESPONSE TO PETITION

The Board of Appeals (the "Board"), Department of Economic and Employment Development, in response to Appellant's Petition states:

1. The Board intends to participate in the action for judicial review.
2. The Board denies the allegations in the Petition.
3. Section 8-512(d) of the Labor and Employment Article, Maryland Code, confines the jurisdiction of the court to questions of law, and this is not a trial de novo.
4. The findings of the Board are conclusive because they are supported by substantial evidence, and there is no error of law.

WHEREFORE, the Board requests its decision be AFFIRMED.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Lynn M. Weiskittel, Asst. Atty. General
Rachel Nunn, Staff Attorney
Michele McDonald, Staff Attorney
217 E. Redwood St. - 11th Floor
Baltimore, Maryland 21202
(410) 333-4813

CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that on this 18th day of November, 1993, a written notice of this appeal and a copy of this Response were mailed to Stephen D. Langhoff, Esq., 207 E. Redwood Street, Baltimore, MD 21202 and to Litton Systems, Inc., c/o Gates, McDonald, P.O. 182366, Columbus, OH 43218.

Attorney

J

CIRCUIT COURT FOR BALTIMORE CITY MSV534 DATE: 11/24/93
TERMINAL: V147 EVENT DATA TIME: 11:30

CASE NUMBER: 93308008 BOARMAN VS LITTON SYSTEM INC CL172143
CATEGORY: APPAA
ORIG COURT: CL TRANSCRIPT PAGES: TERMINATION DATE: 11/19/94
STATUS: A CONSOLIDATED: LAST CHANGE: 11/24/93
STATUS DATE: 11/19/93 PROTRACTED:

DATE:	CODE:	EVENT TEXT
110493	FILE	PETITION FOR JUDICIAL REVIEW ON BEHALF OF THE CLAIMANT FROM
110493		A DECISION OF DEPT OF ECONOMIC & EMPLOYMENT DEVL. DATED
110493		OCTOBER 8, 1993, (1)
110493		CLAIM NUMBER: 1698-BR-93
110493	MEMO	COPY OF PETITION MAILED TO D.E.E.D.
111993	MOTN	MOTION FOR EXTENSION OF TIME (2)
111993	ANSW	THE BOARD'S RESPONSE TO PETITION (3)
112493	MEMO	CASE SENT TO JUDGE HELLER ON ENTRY 2

2 UB

CECILIA BOARMAN	*	IN THE
vs.	*	CIRCUIT COURT
LITTON SYSTEMS, INC.	*	FOR
and	*	BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	*	Civil Action No. 93308008/CL172143

MOTION FOR EXTENSION OF TIME FOR FILING THE ADMINISTRATIVE RECORD

The Board of Appeals, Department of Economic and Employment Development ("the Board"), an Appellee herein moves that the time for filing the administrative record in this unemployment insurance appeal be extended. The grounds for its Motion are as follows:

1. Pursuant to Section 8-506(d) of the Labor & Employment Article, Maryland Annotated Code, the Board is responsible for keeping records of testimony in proceedings before the Department of Economic and Employment Development regarding any appeals from determinations of unemployment insurance claims. Records in these cases are provided to claimants/appellants at no cost.

2. In this case the Appellant filed the Petition for appeal on November 4, 1993. The Appellant's Petition was received by the Board on November 9, 1993.

3. The Board's Answer is being filed concurrently with this Motion. The administrative record is due to be filed in circuit court, pursuant to Rule 7-206(c), by January 8, 1994.

4. The administrative hearing before the Hearing Examiner in this appeal includes 11 audio cassettes and the transcript of that hearing is estimated to include over 500 pages. The record in this case also contains exhibits and other numerous documentation.

5. Based upon the voluminous nature of this record and the extensive number of appeals to be processed by the Board, it is not possible for the Board to file this record by January 8, 1994.

6. The undersigned counsel for the Board has notified counsel for Appellant, Stephen D. Langhoff, Esq., and the representative for coAppellee, Gates, McDonald, of the problem in filing the administrative record in this appeal. Both counsel and representative have indicated that they have no objection to an extension of the filing date under the circumstances.

7. Rule 7-206(d) allows this Court to extend the time for filing the administrative record to 120 days after the Board's receipt of the Petition for Appeal.

8. The record in this case will be transmitted to this Court on or before March 9, 1994, as the Rule allows.

WHEREFORE, the Board requests that the time for filing the administrative record in this case be extended to March 9, 1994.

STATEMENT OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION FOR EXTENSION OF TIME FOR FILING THE ADMINISTRATIVE RECORD

Art. 95A, Section 8-506(d) of the Labor and Employment Article of the Annotated Code of Maryland, clearly places the authority for preparation of the administrative record for the circuit court in unemployment insurance appeals with the Board of Appeals, Department of Economic and Employment Development (the "Board"). The Board is responsible for preparing and overseeing the submission of its administrative records in a timely manner in all such appeals.

Because of the voluminous nature of the record in this case and the extensive number of appeals to be processed by the Board this administrative record cannot be filed in a timely manner.

Rule 7-206(d) specifically provides that upon the application of any party, and for sufficient cause shown, this court can extend the time for filing the record to a period not exceeding 120 days after the receipt of the first copy of the Petition of Appeal.

In this case, the Board has asked for an extension of 60 days, as the rule allows. The delay caused by the Board's request will not prejudice any party to the administrative appeal, because appropriate Memoranda cannot be submitted pursuant to Rule 7-207, nor can the court hear this case before the record is filed.

This is an exceptional situation due to the unusual size of the administrative record in this case and the large number of appeals to be processed by the Board. All parties stand to benefit by having an accurate and complete record filed with this court. Therefore, the Board requests that its Motion be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Lynn M. Weiskittel, Asst. Atty. General
Rachel Nunn, Staff Attorney
Michele McDonald, Staff Attorney
217 East Redwood Street
11th Floor
Baltimore, MD 21202
Phone: (301) 333-4813

AFFIDAVIT

I SOLEMNLY AFFIRM, under penalties of perjury, that the aforegoing is true to the best of my knowledge, information and belief.

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of November, 1993, I mailed a copy of the aforegoing Motion for Extension of Time for Filing the Administrative Record, Statement of Grounds and Authorities, and proposed Order of Court to Stephen D. Langhoff, Esq., 207 E. Redwood Street, Baltimore, MD 21202 and to Litton Systems, Inc., c/o Gates McDonald, P.O. 182366, Columbus, OH 43218.

Attorney

93308008

CIRCUIT COURT
BALTIMORE CITY

93 NOV -4 AM 10: 02

CIVIL DIVISION

CL72143

IN THE CIRCUIT COURT FOR BALTIMORE CITY

PETITION OF *

CECELIA BOARMAN *
1616 Cantwell Road, Apt. D
Woodlawn, Maryland 21244 *

FOR JUDICIAL REVIEW OF THE DECISION OF THE *
MARYLAND DEPARTMENT OF ECONOMIC & EMPLOYMENT
DEVELOPMENT * CIVIL ACTION NO. _____
1100 N. Eutaw Street
Baltimore, Maryland 21201 *

IN THE CASE OF *

CECELIA BOARMAN, Claimant *

LITTON SYSTEM, INC., Employer *

Appeal No. 9306641 *
Decision No. 1698-BR-93

* * * *

PETITION FOR APPEAL FROM ADMINISTRATIVE AGENCY

MR. CLERK:

1. Petitioner, Cecelia Boarman, by her attorney Stephen D. Langhoff and Langhoff & Wacker, P.C., hereby requests judicial review of the Order of the Board of Appeals, Maryland Department of Economic and Employment Development passed in the above case on October 8, 1993.

2. Petitioner was a party to the Agency proceeding.

RCW

Copy sent

STEPHEN D. LANGHOFF, ESQUIRE
LANGHOFF & WACKER, P.C.
207 E. Redwood Street
Baltimore, Maryland 21202
(410) 332-1010

Attorney for Claimant

428108

1993

DISC. DAYS CHILD CARE V NUTRITION & TRANS Box 481 Case No. 93258067 [MSA T2691-5556, OR/22/10/31]

YATES VS MD INSURANCE COMMISSIONER, ET Box 499 Case No. 93270059 [MSA T2691-5574, OR/22/11/1]

BOARMAN VS LITTON SYSTEM INC Box 551 Case No. 93308008 [MSA T2691-5627, OR/22/12/6]

F.L. 2-4-10 80 Images

KINZIE VS.MD DEPT OF ECON.& EMP. DEV. Box 599 Case No. 93337061 [MSA T2691-5675, OR/22/13/7]

KIM VS. ZONING BOARD Box 614 Case No. 93350027 [MSA T2691-5690, OR/22/13/22]