



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	1858-BR-92	
	Date:	October 20, 1992	
Claimant:	Reginald K. Pitts	Appeal No.:	9208506
	S. S. No.:		
Employer:	B P S Guard Svcs, Inc.	L. O. No.:	001
	Appellant:		CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.		

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

November 19, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the findings of fact and conclusions of law of the Hearing Examiner.

The claimant worked for about a year and a half as a security officer. According to state law, those who work as security guards need clearance from the state police. During the police investigation of the applicants record, the employee may work on a probationary status.

This claimant was in such a probationary status when the police notified the employer that he was not approved to work as a security officer. The claimant had a right to appeal the denial of the police permit, but he did not do so. The reason for the denial of the permit is unknown. When the employer learned that the claimant had not filed an appeal, he was discharged.

The Board has not given any weight to the employer's statement that 99% of these denials are cleared up on appeal, allowing the employee to get his permit and go back to work. The employer's witness admitted that the employer was completely unaware of the reason for the particular denial of a permit. The assertion that the claimant could have easily cleared this up by appealing was pure speculation - especially in the light of the claimant's statement which implied that he was denied a permit because of something in his past.

The claimant will be held to have been discharged. The Board has held in the past that an employee's failure to appeal an employer's decision to discharge him does not change the discharge into a voluntary quit. This is an analogous situation. The claimant's failure to appeal the denial of his permit is not a quit. The fact is that the permit was denied, and the claimant was not allowed to work. This is a discharge. His failure to take further action cannot change the discharge into a quit.

There is no evidence of misconduct causing this discharge. The reason for the denial of a permit is totally unknown.¹ For the purposes of the unemployment insurance law, the claimant was discharged, but not for any proven misconduct.

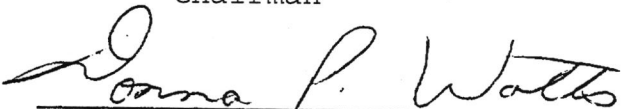
DECISION

The claimant was discharged but not for misconduct, within the meaning of Section 8-1003 of the Labor and Employment Article. No disqualification shall be imposed based upon his separation from employment with B P S Guard Services, Inc.

¹The claimant stated on the 221 that he was denied a permit because of his "past." This ambiguous statement is not enough evidence to find that the claimant had falsified his original employment application.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:D

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COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark W. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 511
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Date: Mailed 5/14/92

Claimant: Reginald K. Pitts
Appeal No.: 9208506
S. S. No.:

Employer: B P S Guard Services, Inc.
L.O. No.: 01
Appellant: Claimant

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

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201. EITHER IN PERSON OR BY MAIL.

May 29, 1992

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

Claimant Not Present

FOR THE EMPLOYER:

Represented by
Andrea Merolle,
Personnel Manager

FINDINGS OF FACT

The claimant worked as a Security Officer for B P S Guard Services, Inc. from August 20, 1990 until March 3, 1992,

earning a wage of \$6.25 per hour. The claimant worked forty hours per week.

The claimant is in the security business. All applicants for employment as Security Guards must be approved by the Maryland State Police. In accordance with established procedures, each applicant must submit fingerprints for a Security Guard Clearance Application to be checked with the Federal Bureau of Investigation and Criminal Justice Information Systems Central Repository. After this procedure is complete, the Maryland State Police either approves or disapproves an applicant for work, as a Security Guard or Watchman. The employer, upon receiving a Disapproval Notice must notify the applicant of the proper procedures for appealing the Disapproval Notice. The request for appeal must be submitted for writing forwarded to the Licensing Division of the Maryland State Police within thirty days of the date of Notice to the applicant.

The employer in this case, B P S Guard Services, Inc. submitted the claimant's fingerprints to the Maryland State Police and the applicant was disapproved to work. Since the claimant had started employment, pending the investigation, he was considered a probationary pending employee. Having been properly notified by the employer of his rights to appeal, the claimant elected not to file an appeal or follow through on the matter with the State Police. The employer is required to move the applicant for clearance, immediately from the job site, pending the appeal process.

On March 18, 1992, the claimant turned in his uniform to the employer. Under State Police Guidelines, the employer is not given the details behind a disapproval. The employer considered the claimant to be a good employee, who could have remained on the job; there was still work available for the claimant.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1)(i), (ii) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

The Maryland Code, Labor and Employment Article, Title 8, Section 1003(a)(b) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause, within the meaning of Title 8, Section 1001.

The claimant voluntarily turned in his work uniforms and voluntarily waived his right to appeal the matter of his disapproval for work, by authorization of Maryland State Police. These circumstances were not causes arising from or connected with the conditions of employment or actions of the employer.

DECISION

It is held that the unemployment of the claimant is due to leaving work voluntarily, without good cause, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 11001. Benefits are denied for the weeks beginning March 1, 1992, and until the claimant becomes re-employed, earns at least ten times his weekly benefit amount (\$1140) in covered wages, and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

Carolyn White
 Carolyn White *pmc*
 HEARING EXAMINER

DATE OF HEARING - May 11, 1992
 SPECIALIST ID: 01041
 pmc/CASSETTE IN FILE

COPIES MAILED ON 5/14/92:

Claimant
Employer
Unemployment Insurance - (MABS)