

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

Decision No.: 873 -BR-88
Date: Sept. 23, 1988
Claimant: Thomas Hickman
Appeal No.: 8805505
S. S. No.:
Employer: Crown Central Petroleum Corp. L. O. No.: 9
c/o Gates McDonald

CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE 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 AT MIDNIGHT ON October 23, 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the final decision of the Hearing Examiner, but disagrees with some of the reasoning of the Hearing Examiner.

The Board has never held that a resignation is not voluntary where an employee is charged with an incident that could result in his discharge. On the contrary, the Board has repeatedly held that a resignation submitted in response to charges which might result in discharge is a voluntary quit, without good cause or valid circumstances. Brewington v. Department of Social Services (1500-BH-82), Keelis v. State of Maryland (694-BH-81), Smith v. Maryland Training School for Boys (359-BR-84). The Board has ruled, however, that a claimant who is given the choice of resigning or being discharged and who subsequently resigns in lieu of involuntary discharge will be considered as having been discharged for the purposes of the Maryland Unemployment Insurance Law. Miller v. William T. Burnett and Co. (442-BR-82), Tressler v. Anchor Motor Freight (105-BR-83), Lee v. Savings Bank of Baltimore (648-BR-84).

In this case, the Board adopts the Hearing Examiner's finding of fact that the claimant was given an ultimatum to quit or be fired. Based on that finding, the Board agrees that a discharge occurred.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning April 10, 1988 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed.

Thomas W. Keech
Chairman

Donna P. Wotts
Associate Member

K:D
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Gene T. Shiflett

Crown Central Petroleum Corp.

UNEMPLOYMENT INSURANCE - TOWSON

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5046

STATE OF MARYLAND
William Donald Schaefer
Governor

— DECISION —

Date Mailed: June 24, 1988

Claimant: Thomas Hickman

Appeal No: 8805505

S.S. No.:

Employer: Crown Central Petroleum Corp. L.O. No.: 9

Appellant: Claimant

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

July 11, 1988

NOTICE: 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:

Thomas Hickman - Claimant
Gene T. Shiflett - President
- Teamsters Local 311

FOR THE EMPLOYER:

Jack Perron -
Terminal Manager;
Robert B. Lutz -
Attorney - Gates,
McDonald

FINDINGS OF FACT

The claimant was employed by Crown Central Petroleum Corporation as a chauffeur for twenty-four and one-half years. His last day of work was April 17, 1988.

The claimant was given an ultimatum by the employer, either quit or be fired. This was because he had a minor accident with his tractor trailer and hit a van. The claimant did not report the

accident to the employer because he would be terminated. Instead, he told the owner of the vehicle that he would pay for the damage himself. The company later found out that the claimant had been involved in the accident.

The claimant had a bad driving record. On July 23, 1987, pursuant to an agreement between the union and management, the claimant was reinstated to his previous position with no loss of seniority, rate of pay or benefits. However, the claimant did not receive any back pay. The agreement, in lieu of discharge, indicated that any company policy, work practice, safety practice or rule of conduct violation in the next thirty-six months following his return to work would result in immediate termination. The claimant was involved in a non-chargeable accident which he did not report immediately in January of 1988. This was reduced to a reprimand at the union's request.

When the employer became aware of the claimant's accident in April which he did not report, he was immediately terminated.


CONCLUSIONS OF LAW

Section 6(b) of the Maryland Unemployment Insurance Law requires the denial of benefits until re-employment when it is held that an individual was discharged for gross misconduct connected with his work. The term "gross misconduct," is defined in the Act as a deliberate and willful disregard of the standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded his obligations. A lesser disqualification is imposed when an individual is discharged for misconduct connected with his work. Misconduct means a substantial deviation from the proper standards of conduct. Both terms connote the element of deliberate or willful wrongdoing. The Board of Appeals has held that a resignation is not voluntarily made where a person has been charged with an incident that could result in his discharge. Thus, the claimant's resignation is not controlling as to the reasons for separation from employment. Based upon that fact and the testimony presented at the appeals hearing, it is concluded that the claimant was separated from his employment for reasons which constitute gross misconduct within the meaning of Section 6(b) of the Law. This is especially true where the claimant did not follow the employer's policy in reporting an accident, even though he did this because he was afraid of being terminated. Therefore, the determination of the Claims Examiner will be reversed.

DECISION

The claimant was separated from his employment for acts which constitute gross misconduct within the meaning of Section 6(b) of the Law. Benefits are denied for the week beginning April 10, 1988 and until he has become re-employed, earns at least ten times his weekly benefit amount (\$1,950) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Seth Clark
Hearing Examiner

Date of hearing: 6/14/88
amp/LaMara/3654
Copies mailed on June 24, 1988 to:

Claimant
Employer
Unemployment insurance - Towson (MABS)

Robert B. Lutz, Esquire
Gates, McDonald

Gene T. Shiflett

Crown Central Petroleum Corporation