



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 1-BH-83

DATE: January 3, 1983

APPEAL NO.: UCF-248

S. S. NO.:

CLAIMANT: Richard T. Hubatka

EMPLOYER: Dept. of Health & Human Services

L. O NO.: 1

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant was discharged for gross misconduct, connected with the work within the meaning of § 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 SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT February 2, 1983

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Richard T. Hubatka Claimant

Not Present

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

The Board of Appeals notes that the employer did not appear to present evidence at either of the two hearings in this case.

FINDINGS OF FACT

The Claimant was employed by the Department of Health and Human Services as a Claims Folder Clerk for the Social Security Administration, which entailed performing duties as a clerk typist. He worked there from June, 1975 until he was discharged on June 25, 1982.

The Claimant was discharged because he was convicted, on two separate occasions, of the crime of sexual offense in the third degree, involving illegal activity with minor children. The first conviction occurred sometime in 1979; the second conviction, the act that directly led to his termination, occurred approximately in April of 1982. Neither of these offenses were crimes of violence.

Neither of the incidents leading to the convictions occurred while the Claimant was working on the employer's premises. The minors involved were not employees or related to the employees of the Social Security Administration. In fact, these incidents occurred near the Claimant's home, in the evenings.

The Claimant's job was not one involving supervisory responsibilities or contact with the public. Primarily he typed documents and forms regarding claims for disability benefits. His name did not appear on the documents nor did he have to sign them as part of his job.

Although the Claimant was detained in jail for six months prior to his trial, from approximately November 7, 1981 until April 20, 1982, he was allowed to return to work on April 26, 1982 and was not fired due to absenteeism.

Following his conviction in 1982, the Claimant was not further detained, but was given a suspended sentence, placed on probation and referred for out-patient psychiatric therapy, which he has been regularly attending.

CONCLUSIONS OF LAW

After careful review of the record in this case, the Board of Appeals concludes that the acts for which the Claimant was terminated, while clearly misconduct, were not in any way connected with his work.

In two Court of Appeals cases dealing with the question of what actions are connected with one's work, Employment Security Board v. LeCates, 145 A.2d 840 (1958) and Fino v. Maryland Employment Security Board, 147 A.2d 738 (1959), the Court of Appeals dealt with the issue of whether an act of misconduct is connected with an employee's work. While the Court did not definitively adopt precise standards, it did discuss certain factors which may be considered, among them:

- (1) whether there was a breach of duty to the employer;
- (2) whether the act occurred during the employee's hours of employment ;
- (3) whether the act occurred on the employer's premises;
- (4) whether the act occurred while the employee was engaged in his work;
- (5) whether the employee took advantage of the employment relationship in order to commit the act;
- (6) whether the misconduct was such as to adversely affect the employee's suitability to continue his employment.

See, LeCates, supra at 845.

The Court also indicated that a breach of duty to the employer, although not in itself sufficient to connect an employee's act to work, was an essential element in order to make an act connected with the work. See, LeCates, supra at 845.

In this case, none of the factors listed above appear to be present. The incidents involved occurred neither during the Claimant's hours of employment nor on the employer's premises, nor was the Claimant engaged in his work at the time. There is no evidence that the Claimant took advantage of the employment relationship in order to commit the act nor is there evidence that his conduct was such as to adversely affect the Claimant's suitability to continue his work. The Claimant's job did not involve working with children, or, for that matter, the public at large. Even if adverse publicity had resulted from his convictions (and there is no evidence that it did), this would not be sufficient. As the Court of Appeals stated in Fino, supra at 741:

...the mere fact that misconduct adversely affects the employer's interests is not enough. It must be incident to the work, or directly related to the employment status.

Here, the Board does not even find sufficient evidence that the employer's interest would have been adversely affected.

Finally, the Board finds no evidence that the Claimant breached his duty to the employer. See Fine, supra at 740, where the Court found a distinction "between obligations arising out of an employment contract and the general obligations of citizenship or to the community at large. "

In conclusion, the Board of Appeals finds no reasonable nexus between the actions of the Claimant that led to his discharge, and the Claimant's work. This conclusion is not intended as a judgement concerning the correctness of the employer's decision to discharge the Claimant. However, the unemployment insurance law requires a finding that the Claimant's actions not only constituted misconduct or gross misconduct but that the misconduct or gross misconduct was connected with the work.

DECISION

The Claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of §§ 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with the Department of Health & Human Services. The Claimant may contact his local office concerning the other eligibility requirements of the Law.

The decision of the Appeals Referee is reversed.


Associate Member


Chairman

W:K
dp

DATE OF HEARING: December 14, 1982

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
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BOARD OF APPEALS
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 Chairman
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 HAZEL A. WARNICK
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Richard T. Hubatka
 EMPLOYER: Dept. of Health & Human Services
 DATE: September 1, 1982
 APPEAL NO.: UCF 248
 S. S. NO.:
 L. O. NO.: 1
 APPELLANT: 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 TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON September 16, 1982

- APPEARANCES -

FOR THE CLAIMANT: Present
 FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant was employed by the Department of Health & Human Services, a Federal department from June, 1975 until June 25, 1982. The claimant was a clerk typist, who typed decisions allowing and disallowing Social Security benefits.

In 1980, the claimant, as a result of a plea bargain, entered a plea of guilty to a third degree sexual offense, which involved conduct with a seven to eight year old girl. Approximately two years later, he was tried and convicted of the same offense. As a result of the latter trial and conviction, he was sentenced to a jail term and served approximately six months.

The employer learned that the claimant had been convicted of such an offense in February, 1982. When he was released from jail and returned to work, the employer began termination proceedings. The claimant returned to the job on April 26, 1982 and termination proceedings ended with his removal, as of June 25, 1982. The reason given for his removal by his employer was that his retention as a Federal employee could be detrimental to employee morale and public confidence.

The claimant has taken advantage of the Federal appeals procedures to the personnel action terminating him. At the present time, his case is awaiting scheduling before an arbitrator.

CONCLUSIONS OF LAW

Section 6(b) of Article 95A disqualifies claimants who are discharged for gross misconduct connected with their work. Gross misconduct is defined in the Statute as a deliberate and willful disregard of standards of behavior, which the employer has a right to expect, showing a gross indifference to the employer's interest. It is also defined as a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded his obligations. It has frequently been held by the Board of Appeals of the Employment Security Administration that more is required of governmental workers, such as Federal employees, in the nature of acting so as not to bring their employer into this repute than is required of the average non-governmental employee.

The claimant in this case, by repetitive criminal acts involving third degree sexual offenses with very young girls made his retention in the Federal service impossible, without detriment to employee moral and public confidence in that service.


The repetitiveness of the conduct and its nature bring it within the definition of gross misconduct under Section 6(b). Its connection with the work is supplied by the duty of Federal employees to conduct themselves off the job and on the job, so as to preserve public confidence in governmental institutions, as previously discussed.

DECISION

The claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving unemployment insurance benefits for the week beginning June 20,

1982 and until he becomes reemployed and earns at least ten times his weekly benefit amount (\$1,030.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.


Martin A. Ferris
Appeals Referee

Date of hearing: August 23, 1982

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(4609-Lyde)

Copies mailed to:

Claimant
Employer
Unemployment Insurance - Baltimore