Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

—DECISION—

Decision No.: 1027-BR-91

Date: August 19, 1991

Claimant: Floyd Solomon, Jr.

Appeal No.: 9109341

S. S. No.:

Employer: Cantwell Cleary Co., Inc.

L. O. No.: 07

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct, connected with the 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 September 18, 1991

—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 decision of the Hearing Examiner.

The Board rarely reverses the credibility findings of the Hearing Examiner, but it will do so in this case, for the reasons explained below.

This case involves the claimant being discharged for failing to obey an order given him by his employer. The claimant admits that the employer gave him this order and that he refused to carry it out. In this situation, the burden shifts to the claimant to explain why he did not carry out the order.

The claimant appeared at the hearing alone, with no witness present from the employer to contradict his testimony. Nevertheless, the claimant still failed to meet his burden, since his testimony about why he did not carry out the order was completely inconsistent and self-contradictory.

The testimony about the claimant's ability to work on April 26, 1991 was inconsistent. The claimant presented a doctor's note which stated that he was able to work on April 26, 1991. The claimant testified that he reported to the work place that day but could not work because he was taking medication which prevented him from driving or operating machinery. Later, he testified that he was able to work that day, but the employer would not let him work. He again testified that he could not drive a truck that day because of his medication, but he also testified that he asked to drive and that it was his employer who forbade him to do SO. Later, he testified that he was actually taking this medication only at night.

The specific order which the claimant refused was not an order to drive. The claimant was told instead to accompany another driver on a road test. The claimant admitted that he refused to do this. He testified that his job did not include training; then he testified that he did train this other man to drive. He testified that he was afraid because the other driver drove too fast and the truck would be bumping too much. Later, he testified that he would have done the task if his employer had asked in a nicer way.

Taken as a whole, this testimony is completely incoherent and self-contradictory. The claimant has not met the burden of explaining why he refused an order of his employer which appears to have been reasonable and related to his ordinary job duties. Under the circumstances, the claimant's refusal was a deliberate violation of standards his employer had a right to expect, showing a gross indifference to his employer's interest. This is gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

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 28, 1991 and until he becomes reemployed, earns at least ten times his weekly benefit amount ($2,150.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:H
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed: 07/2/91

Claimant: Floyd Solomon, Jr.

Appeal No.: 9109341

S. S. No.:

Employer: Cantwell Cleary Co., Inc.

L.O. No.: 07

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 17, 1991

— APPEARANCES —

FOR THE CLAIMANT: Claimant - Present

FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant was employed between February 19, 1990 and April 22, 1991. He worked full-time, earning $11.00 an hour as a tractor trailer driver, delivering and moving various supplies and equipment.

The credible evidence indicate that the claimant hurt his back at work on or about April 22, 1991. He was seen by his personal physician, William Brown, Jr., MD, Washington, DC, and released for full-time ,work effective April 26, 1991 without restriction.

The claimant returned to work on April 26, 1991, and was observed by the warehouse operations manager, Glen Womack. Mr. Womack had told the claimant that he could have also been seen by the company doctor, but since the claimant was not interested in filing a Workers Compensation claim, he decline Mr. Womack's offer. Expecting to be assigned his normal route, the claimant reported for work, but was told by Mr. Womack that he had to take a driver that he had trained on a road test, or else there was no work for him that day. The claimant was afraid to go with the individual because he drives quickly and the claimant's back was still bothering him. Therefore, he asked again if he could drive his regular route, but his request was declined, and he was told that if he did not take the fellow for his road test, that he could "take his uniforms." This meant, in effect, that he was being discharged by Mr. Womack. The employer's witness did not appear at the appeal hearing, and the claimant has successfully rebutted prior allegations made by the employer that the claimant had reported to work under the influence alcohol on April 26, 1991. Although the claimant freely admits that he is a recovering alcoholic, there is no evidence in the record whatsoever to support a finding that he was at any point in time during his employment with Cantwell Cleary Company, Inc. under the influence of alcohol. Though the claimant speech may not be crystal clear, it is the opinion of the Appeals Hearing Examiner that this is his normal speech pattern, and is not indicative of his being under the influence of alcohol or any other controlled, dangerous substance. The claimant's testimony that he did offer excuses for being unable to come to work subsequent to returning on April 26, 1991 is also credible. Without testimony proffered by the employer to rebut his in-person, under oath statements, the claimant's rendition of the events which led up to his discharge is to be believed.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) 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.

Article 95A, Section 6(c) 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.

In this case, the claimant's refusal to accompany a driver on a road test was reasonable under the circumstances. The employer was well aware that he had just returned from a medical leave of absence because he had injured his back. There was no explanation provided by the employer why the claimant was not reassigned to his normal route and why someone else was not to accompany the driver for this test.

Because the claimant offered a rational explanation to Mr. Womack why he was leery of being in the same vehicle with the other driver, his behavior does not rise to the level of insubordination.

DECISION

It is held that the claimant was discharged, but not for gross misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Law. No disqualification is imposed based on his separation from employment with Cantwell Cleary Company, Inc. The claimant may contact the other office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner below is hereby reversed.

Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: 6/24/91
ec/Specialist ID: 07200
Cassette No: 6154
Copies mailed on 07/2/91 to:
Claimant
Employer
Unemployment Insurance - College Park (MABS)