



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

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— DECISION —

Claimant: John Stout

Decision No.: 1030-BH-85
Date: November 22, 1985
Appeal No.: 04034
S. S. No.:

Employer: Laurel Race Course
ATTN: Michael Milanowski
Dir. of Personnel

L.O. No.: 8
Appellant: EMPLOYER

Issue: Whether the claimant was discharged for misconduct or gross misconduct, connected with his work, within the meaning of §§6(c) or 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT 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 ON December 22, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Ed Tolchin, Esq. ;
James Mango,
Witness

EVALUATION OF EVIDENCE

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 in this case, as well as the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a parimutuel teller at the Laurel Race Course from 1967 until on or about February 17, 1985. The claimant was discharged because of a series of suspect shortages that he experienced as a teller, culminating in a gross shortage of \$900 on February 17, 1985, immediately after which he disappeared for several days without contacting the employer.

Each teller at the race course has his own machine for which he is responsible and to which only he has access via a secret code. At the start of the work day the opening balance is set for each teller at \$820. Tellers accept wagers, process wagers, accept the money for them, accept winning tickets and also pay out the money on the winning tickets. The machine is computerized and the money is kept in a box. A teller is not supposed to have substantially over or under \$820.00 in his box at any given time. If he is running low and needs more money, a teller can go to the division head and get a "draw" for the additional cash which is entered into his machine. A hard copy of the transaction is issued, and then the money is placed in his box. If the teller has too much money in his machine, likewise he is to "skim" the excess money and bring it to the division head. This too is entered into his machine with a hard copy verification.

There are essentially three reasons why a teller may experience a shortage: (1) a mechanical error by the teller such as pushing the wrong button in the machine or returning the wrong amount of cash to a customer; (2) unauthorized gambling by the teller, without putting the money in the cash box; or (3) outright taking of money from the cash box by a teller. If the error is due to an honest mechanical error, the teller usually discovers it and reports it immediately to the employer, who does an accounting of the teller's machine to see if the matter can be straightened out. Usually the problem can be resolved if it is an honest mistake.

Prior to February 17, 1985, the claimant had experienced several instances of shortages in his machine. As a result he received warnings that if this continued it could lead to his termination.

On February 17, 1985, the claimant left at the end of the day without reporting any shortage. However, when the machines were checked and the amounts tallied, his machine showed that he was \$900.00 short, an unusually large amount for a shortage. The claimant never reported this shortage to the employer. Furthermore, the claimant did not report the next day he was due in to

work and did not report to work or contact the employer for several days. When the claimant was finally contacted by the employer he was told he was discharged.

The claimant was discharged as a result of this gross shortage for which he failed to give any explanation, compounded by the fact that he disappeared for several days and had prior shortages as well.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b) of the law. The employer has provided substantial evidence to show not only that there was a gross shortage in the claimant's machine on February 17, 1985, but also that it was not due to negligence or mechanical error. The claimant was in sole control of the teller machine and the money, and the claimant not only never offered an explanation for the disappearance of the money but failed to even report to work or contact the employer several days thereafter. This alone constitutes a deliberate and willful disregard of standards of behavior, which his employer had a right to expect, showing gross indifference to the employer's interest. When added to the prior warnings for suspicious cash shortages, the claimant's conduct also falls under the second definition for gross misconduct, a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligation. The evidence in this case is in striking contrast to prior cases dealing with cash shortages where there was insufficient evidence that the claimant deliberately caused the shortage; see, e.g., Cantor v. Chillum Corp., 1028-SE-83, where the Board did find that there was misconduct but not gross misconduct.

Although the burden of proof in a misconduct or gross misconduct case certainly rests with the employer, the employer has more than adequately met its burden here. Having established that the money over which the claimant had sole control and the claimant both disappeared at the same time, the burden shifts to the claimant to provide any reasonable explanation for these events, and the claimant has failed to do so. See, Townsend v. Baltimore Dept. of Public Works, 758-BH-83.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning February 24, 1985 and until he becomes re-employed, earns ten times his weekly benefit amount (\$1,750) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member


Chairman

W:D:K

kbm

Date of Hearing: October 22, 1985

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Edward J. Tolchin, Esq.
Ginsburg, Feldman & Bress