DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— DECISION —

Decision No.: 1031-BH-85

Date: November 22, 1985

Claimant: Tyrone Johnson

Appeal No.: 03682

S. S. No.:

Employer: Baltimore City Health Dept.

L.O. No.: 2

Appellant: CLAIMANT

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

Tyrone Johnson;
Susan Shubin, Legal Aid Rep.

FOR THE EMPLOYER:

Gladys Augustus,
Dir. of Alcohol
Center;
Charles Spinner

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 from March 21, 1979 until February 15, 1985 for the City of Baltimore as an aftercare worker for ex-offenders with alcohol-related problems. His duties included monitoring their employment and conducting group therapy and education groups. He was a caseworker who was required to keep records of his clients.

The claimant was evaluated as a satisfactory worker, although he had some tardiness problems in September of 1983. In that month, he was hospitalized in a psychiatric unit of the University of Maryland Hospital. He was an in-patient for sixteen days; he was then treated for a time as an out-patient by a Dr. Brooks.

The claimant described his problem as neither a psychiatric problem or mental illness but as a case of emotional "burnout." Upon his return to work, the claimant provided a slip from the hospital stating that he was released to return to work. His immediate supervisor had been conversing with his therapist with respect to the claimant's prognosis, but the claimant refused to sign a release allowing continued communication between the supervisor and the therapist. The supervisor requested a more detailed medical note in order to determine whether the claimant was capable of resuming his full duties, but the claimant neither provided one nor granted a release for the supervisor to receive one. There was no written rule that an employee must provide this more detailed medical information to the supervisor, but the supervisor was hesitant to assign the claimant all of his previous duties (which included sensitive interpersonal counseling) without a more detailed knowledge of the claimant's emotional problem.

The claimant returned to work in the first week of October of 1984. His co-workers and supervisors were, for the most part, very supportive of him, although the claimant felt that some of them were hesitant to approach him with problems. On one occasion, however, the claimant was referred to in a meeting as being "crazy." The person who did this was verbally reprimanded by the claimant's supervisor.

The claimant's supervisor decided that the claimant would no longer be assigned to personally work with pre-release inmates at the Jessup or Greenmount Avenue Center. This was done because

of the pleas of inmates that Mr. Johnson not be assigned to them and also because the supervisor was unsure as to whether the claimant was emotionally capable of handling these problems or not.

The claimant was told to finish the paperwork on many of his cases. He was an experienced counselor who knew how to finish this paperwork. The claimant did not do the great majority of his paperwork. He did experience some genuine problems, but the main reason he didn't do the paperwork was that he went into his office often and sat there reading the newspaper all day. The claimant also had a continuing problem of lateness which continued after warnings.

The claimant was terminated by a letter dated February 5, 1985 effective at the end of the work day on Friday, February 15, 1985. The claimant had the opportunity to request an investigation of this termination by the Civil Service Commission. He did so, but abandoned this pursuit prior to the hearing. The claimant later complained to the Human Relations Commision that he had been 'discriminated against on the basis of his mental handicap. Sometime after his discharge, the claimant, with the assistance of a representative of the Community Relations Commission, negotiated a change in his employment records so that the claimant will be listed as having resigned his employment.

CONCLUSIONS OF LAW

The Board has repeatedly ruled that, where a terminated employee fails to avail himself of an appeals or grievance procedure, that fact does not change the termination into a voluntary quit. See, Mackey v. Roadway Express (Appeal No. 10228, Remand Order dated January 10, 1984). Only in cases in which an employee resigns where charges possibly leading to his discharge are in effect has the Board held that the claimant voluntarily quit. Brewington v. Dept. of Social Services (1500-BH-82). In addition, the claimant's later negotiation with his employer to the effect that his records would be changed from that of a discharge to that of a voluntary resignation do not in any way change the fact that the claimant was actually discharged, at least for the purposes of the unemployment insurance law.

Since the claimant was discharged, the burden is on the employer to show that the discharge was either for gross misconduct or ordinary misconduct within the meaning of §6(b) and (c) of the Maryland Unemployment Insurance Law. The employer has certainly met the burden in this case. The claimant was repeatedly late, even after having been warned. In addition, the claimant did not do the work which the employer assigned him to do. Both of these problems continued over a relatively long period of time. The claimant was capable of doing the work which he was assigned, or at least a much greater amount of work than he did. The fact that he went in his office and read the newspaper all day shows that he had little regard for his employer's interest.

The claimant had two excuses for his tardiness and his failure to perform his work. The first exucse was that his employer treated him unreasonably and that his reaction was understandable. The Board does not agree that the employer treated him unreasonably in restricting his job duties in the way that it did. The claimant's second excuse was that his failure to work was due to a reaction to the way the other employees treated him after his hospitalization. The facts show that the great majority of co-employees and supervisors treated the claimant with dignity and respect. The one occasion in which the claimant was called "crazy" by one person certainly does not justify a months-long history of failure to show up on time for work or perform work.

The claimant's argument is difficult to succinctly articulate, but part of his argument appears to be that his conduct was due to emotional problems beyond his control. Although this could be true, the claimant failed to provide any medical documentation, either to his employer or to the Board of Appeals, which would show that his conduct was the result of a mental or emotional illness which was beyond his control. In fact, as part of the claimant's case, he testified strongly that he suffered from no mental or emotional illness which would keep him from doing his full range of work and that it was in fact prescribed that he return to work at the time that he did. Without any medical evidence and in the light of his denial of continued medical problems, the Board will find that the claimant's repeated failure to show for work on time after warnings, and his repeated failure to complete the records he was assigned, were series of repeated violations of work rules, showing a gross indifference to the employer's interest. This is gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning February 10, 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.

Thomas W. Keech
Chairman

Joyce A. Wamsley
Associate Member

K:W

DISSENTING OPINION

I agree that the claimant was discharged, however, I conclude that there is insufficient evidence that the discharge was due to gross misconduct connected with the work.

The claimant had a satisfactory relationship with the employer until he became ill at work with psychological problems which required him to be hospitalized for approximately two weeks. The claimant describes his condition as "burnout", which he attributes to stress from his job. Upon his return to work from hospitalization, the claimant's supervisors relieved him of his primary responsibility of counseling incarcerated persons. This resulted in a substantial reduction in work for him. The claimant requested more work but his requests were denied. At a staff meeting, one of the claimant's supervisors stated.. that the claimant was "crazy". The employer began warning the claimant about latenesses, however, prior to his illness, his latenesses were tolerated and he was allowed to make them up. Other employees reported to work late and were not warned.

Finally, the employer discharged the claimant by letter dated February 5, 1985 for the stated reasons that he was "incompetent or inefficient", violated "lawful or official" rules and regulations, and that he had exhibited a pattern of latenesses. The letter also noted that consideration had been given for his "personal problems".

Where gross misconduct is the asserted reason for a claimant's discharge, the employer must not only prove that the claimant committed some act which constitutes gross misconduct, but the employer must also prove that the act in question was the actual reason for the claimant's discharge. Panaro v. Unemployment Compensation Board of Review, 413 A.2d 772 (1980). I conclude that there is insufficient evidence that the acts cited were the actual reason for the claimant's discharge. I would allow benefits.

Maurice E. Hill

Associate Member

D
kbm
Date of Hearing: October 22, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ms. Susan Shubin

James N. Phillips, Esq.

UNEMPLOYMENT INSURANCE - GLEN BURNIE

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed: 5/6/85

Claimant: Tyrone S. Johnson

Appeal No.: 03682-EP

S. S. No.:

Employer: Baltimore City Health Dept.

L.O. No.: 2

Appellant: Employer

Issue:

Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON May 21, 1985

— APPEARANCES —

FOR THE CLAIMANT: Claimant-Present

FOR THE EMPLOYER: Charles Spinner, Personnel Technician Supervisor
Gladys Augustus, Director

FINDINGS OF FACT

The claimant worked for the employer from March 21, 1979 until February 15, 1985. He was employed as a Psychiatric Aide II, earning $367.89 hi-weekly, working generally from 8:30 a.m. to 4:30 p.m., Monday through Friday, unless he had a night counselling group which would have required him to work from 12:30 p.m. to 8:30 p.m.

Prior to the claimant's separation, he had experienced some medical problems which at leash temporarily limited his ability to work. Even prior to his medical condition, the claimant began reporting to work late and after returning be work from his medical condition continued to report late to work but, in a mere chronic fashion. On February 5, 1985, the claimant was sent notice advising him of the employer's proposed dismissal citing incompetency, inefficiency, failure to obey reasonable directions and serious breach of discipline. The claimant contested the proposed dismissal but, subsequently submitted his letter of resignation in exchange for the employer's agreement to list the claimant as having voluntarily quit.

CONCLUSIONS OF LAW

When the claimant gave up his appeal rights to contest his discharge, he essentially did voluntarily terminate his employment. The determination of the Claims Examiner that the claimant was discharged for a non-disqualifying reason is not supported by the evidence presented in this case, and will be reversed. The claimant will be found to have voluntarily terminated his employment, without good cause attributable to the employer, or without valid circumstances warranting a mitigated penalty. The initial determination of the local office will be reversed.

DECISION

The claimant voluntarily terminated his employment, without good cause attributable to the employer, within the meaning of Section 6(a) of the Law. Benefits are denied from the week beginning February 10, 1985 and until the claimant obtains employment and earns at least ten times his weekly benefit amount ($1,750) and subsequently becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

Date of hearing: 4/18/85
rc
(2696 & 2704)-Scroggs
Copies mailed on 5/6/85
Claimant
Employer
Unemployment Insurance - Glen Burnie

John T. McGucken
Appeals Referee