



Maryland

Department of Economic & Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

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

- DECISION -

Decision No.: 1053-BR-93

Date: June 11, 1993

Claimant: Parrish Hawkins

Appeal No.: 9305726

S.S. No.:

Employer: Charles Co. Commissioners
c/o Unemployment Tax Service

L.O.No.: 7

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the Annotated Code of Maryland, *Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires

July 11, 1993

- 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 Hearing Examiner determined that the employer's witnesses were inconsistent. This determination was unwarranted. Both witnesses testified that the claimant was discharged for a series of offenses, although, as one witness put it, the sleeping incidents constituted "the icing on the cake." It could not be more clear, when all of the testimony is taken in context, that the sleeping incident was considered by the employer as just a culmination of a series of offenses.

The testimony concerning the previous incidents, however, was extremely vague. It did establish that the claimant had been disciplined before for more than one kind of offense.

The Board finds that the claimant's testimony with regard to the sleeping incident lacks credibility. The Board does not believe that the claimant's problems that night were caused by medication. While on duty as a correctional officer, the claimant fell asleep twice in one night. While there is always a question about exactly how deliberate the act of falling asleep on the job is, this is a case in which the claimant's actions were deliberate. His history of violations of various employer rules, and his failure to take advantage of the second chance given him by the supervisor that night, lead the Board to conclude that his action was deliberate.

The claimant's action was a deliberate violation of standards his employer had a right to expect, showing a gross indifference to the actions of the employer. This meets the definition of gross misconduct within the meaning of Labor and Employment Article, LE §8-1002.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning February 7, 1993 and until the claimant becomes reemployed, earns at least twenty times his weekly benefit amount (\$4,460) and thereafter becomes unemployed through no fault of his own.

The decision of the 'Hearing Examiner is reversed.

K:DW

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark W. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 511
1100 North Eutaw Street
Baltimore, Maryland 21201

— D E C I S I O N —

Claimant:	Parrish A. Hawkins	Date:	Mailed:	4 / 1 5 / 9 3
		Appeal No:		9305726
		S. S. No.:		
Employer:	Charles County Commissioners	L.O.No.:		7
	c/o Unemployment Tax Service	Appellant:		Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Title 8, Section 1003.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON **4/30/93**
 NOTE APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

— A P P E A R A N C E S —

FOR THE CLAIMANT:
 Claimant-Present

FOR THE EMPLOYER:
 James Stuller,
 UTS
 Walter Pointer,
 Deputy Director
 Charles County
 Correction Center
 Eunice Savoy

FINDINGS OF FACT

The employer operates the Charles County Jail. The claimant was employed as a Correctional Officer from December 1988 to February 11, 1993, when he was discharged for sleeping on duty.

Mr. Savoy, the claimant's immediate supervisor, found the claimant asleep at 3:52 a.m. and told him to wake up. At 4:50 a.m., she again found him asleep and as a result, he was discharged.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack-271 Md. 126, 314 A.2d 113).

The employer requested a finding of gross misconduct because the claimant was discharged for a series of violations. The employer's testimony as to whether he was discharged for sleeping on duty or a series of violations was inconsistent. Ms. Savoy first testified that he was discharged for sleeping on duty, but later testified that he was discharged for a series of violations. Mr. Pointer's testimony was of the same nature. I, therefore, found that he was discharged not for a series of violations, but for sleeping on duty. The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged for misconduct in connection with the work, within the meaning of the MD Code, Labor and Employment Article 8, Section 1003. Benefits are denied for the week beginning February 7, 1993 and for the nine weeks immediately following.

The determination of the Claims Examiner is affirmed.

W. Van Davis Caldwell

Van D. Caldwell
Hearing Examiner

Date of hearing: 4/6/93
rc/Specialist ID: 07700
SEQ 01
Copies mailed on 4/15/93 to:

Claimant
Employer
Unemployment Insurance - College Park - (MABS)