

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street  
Baltimore, Maryland 21201  
(301) 333-5033



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**BOARD OF APPEALS**

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

**— DECISION —**

	Decision No.:	1114 -BH-88
	Date:	Nov. 30, 1988
Claimant:	Elizabeth Vines	Appeal No.:
		8805412
	S. S. No.:	
Employer:	Saint Joseph Hospital	L. O. No.:
	ATTN: Dawn Schissler	40
	Comp./Benefits Manager	Appellant:
		EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 6(c) 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, IF YOU RESIDE IN BALTIMORE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON December 30, 1988

**— APPEARANCES —**

FOR THE CLAIMANT:  
Claimant not present

FOR THE EMPLOYER:  
Peter Saucier, Atty.  
Diane Curtis, Dir.  
Home Care Hospice  
Program  
Dawn Schissler, Comp./  
Benefits Manager  
John Raley, Pers. Dir.

## 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 Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed as a Home Health Aide with Saint Joseph Hospital from August 11, 1980 until on or about April 15, 1988. The claimant was discharged at that time for refusing to work with a patient who had AIDS (acquired immune deficiency syndrome).

On or about March 15, 1988, the claimant was assigned to report to the home of a patient who was suffering from AIDS. The claimant was scheduled to meet a primary care nurse at the home of the patient. The claimant reported to the home, but when the nurse arrived, she refused to accompany the nurse inside and administer care to the patient. The claimant was required to perform personal care and light housekeeping duties, which included cleaning the immediate patient area, changing the bed, etc. She was not required to administer enemas, nor was she required to take blood from the patient.

In preparation for dealing with AIDS patients, the hospital had provided its employees, including the claimant, with specialized training sessions on how to handle AIDS patients. The claimant attended these sessions, as evidenced by the attendance records. Further, the claimant was provided extra gowns, aprons, a double set of gloves and other equipment for extra protection, in accord with the universal infection control policy. The claimant was informed of the risks of dealing with AIDS patients and how to minimize such risks. Based on the most recent information, the virus is transmitted primarily through body fluids to open areas or mucus membrane areas, and there is minimal risk from saliva, tears or urine. It was also made clear to employees that the hospital has a legal obligation to provide care for handicapped persons, including AIDS patients.

On March 15, when the claimant refused to enter the patient's home, she was sent home and given a chance to change her mind and accept the assignment.. Over the next few weeks, the claimant was offered counseling, retraining and counseling for her friends and family members. However, the claimant was steadfast in her refusal to care for AIDS patients. Finally, after giving the claimant approximately a month to think about it and to accept more training and counseling, the hospital discharged the claimant.

## CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the law. As a Home Health Aide, the claimant had an obligation to the hospital and to the patients to provide care for sick persons. This obligation, by its very nature, involved some risk.

In this case, the duties that the claimant would have had to perform would have subjected her to a minimal risk of infection. The hospital took every precaution possible and provided the claimant with training and counseling and all the equipment necessary to protect her from infection. Contrary to the findings of the Hearing Examiner, the Board finds that the claimant was not required to give an enema nor was she required to take blood or inject needles. Had she been obligated to do so, the Board might have reached a different conclusion in this case.

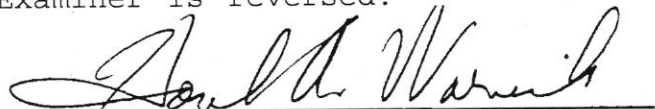
The Board is cognizant of the particular problem faced by employees who are required to work with people who have AIDS. Morris v. Maryland National Bank, 339-BH-87, examined this issue in regard to a bank employee who refused to work with a co-worker who was in remission from AIDS. In that case, the only contact between the claimant and the co-worker would have been casual, and based on extensive medical testimony that such contact was not a risk to the claimant's health, the Board concluded there that the claimant quit her job without good cause or valid circumstances.

In this case, the contact is far less casual than it was in the Morris case. However, contact with ill persons was an integral part of the claimant's duties. The Board finds the claimant's refusal to do her job, despite the additional counseling and training, and in view of the minimal risk to the claimant and the precautions and training already provided by the employer, was gross misconduct within the meaning of Section 6(b) of the law.

## DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning April 10, 1988 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1,600) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Associate Member

  
Chairman

HW:W:K

kbm

Date of Hearing: September 22, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Peter S. Saucier, Atty.  
Venable, Baetjer & Howard

UNEMPLOYMENT INSURANCE - EASTPOINT

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 383-5040

STATE OF MARYLAND  
William Donald Schaefer  
Governor

--- DECISION ---

Date: Mailed June 27, 1988  
Claimant: Elizabeth Vines Appeal No.: 8805412  
S.S. No.:  
Employer: Saint Joseph Hospital L.O. No.: 40  
Appellant: Claimant  
Issue: Whether the claimant was discharged for gross misconduct connected with her work within the meaning of Section 6(b) of the Law.

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- 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON July 12, 1988  
NOTICE, APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

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- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by  
Dawn Schissler,  
Compensation and  
Benefits Manager

FINDINGS OF FACT

The claimant was employed by St. Joseph Hospital from August 11, 1980 until April 15, 1988. She performed the services of a Home Health Aide and was earning \$6.92 per hour this employment.

The claimant's duties required her to visit and assist patients at their homes. Just prior to her employment ending at Saint Joseph Hospital the claimant was told by her supervisor that she would have to provide health

care services to a patient who was suffering from Acquired Immune Deficiency Syndrome (AIDS). The claimant's duties involved taking vital signs of each patient, shopping for them, cleaning their house, feeding and preparing for the patients if necessary, and giving them baths. Additionally, the claimant was instructed that she would have to give an enema to the patient who had AIDS at each visit. The claimant was told that in performing this duty she should wear double gloves meaning two pairs of gloves and that she should wear a medical gown. The claimant was unwilling to accept this patient because of the claimant's genuine fear of contagion from this patient. The claimant was told by the employer that she would be discharged for refusing to carry out her duties but as an alternative she could resign. The claimant opted to resign so that a discharge would not appear in her records.

#### CONCLUSIONS OF LAW

Section 6(a) of the Maryland Unemployment Insurance Law provides for the denial of benefits when an individual leaves work voluntarily, without good cause. The Maryland Court of Appeals has held that the term "leaving work voluntarily" shows a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment. Allen v. Core Target City Youth Program, 275 Md. 69, 338 A2d 237 (1975). In the instant case the claimant resigned from her job as an alternative to a discharge. Under these circumstances I reject the employer's contention that the claimant left work "voluntarily."

The Claims Examiner ruled that the claimant was discharged for gross misconduct connected with her work because she failed to follow instructions of the employer. The Law provides that benefits shall be denied until after re-employment when an individual is discharged for gross misconduct connected with his/her work. Gross misconduct means conduct of an employee which is a deliberate and willful disregard of standards of behavior, which his/her employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his/her obligations. The Maryland Board of Appeals ruled as follows in its decision on the claim of an individual who walked off her job when a co-worker with AIDS returned to work. In its decision cited as Joan Morris v. Maryland National Bank, 339-BH-87. The claimant was a supervisor of an employee in a bank. A co-worker with AIDS was

about to return to work and the employer had a physician lecture the bank employees to the effect that a casual contact with an AIDS patient is safe. At the unemployment insurance hearing the physician was present as a witness and testified that casual contact such as bank employees have with each other is safe because the AIDS virus is not spread by casual contact. On this basis, and with this evidence in the record, the Board ruled that the claimant left her job voluntarily without good cause or a valid circumstance.

However, the facts in the instant case differ significantly and substantially from those in the Morris case as decided by the Board of Appeals. In Morris the contact by the claimant with the AIDS patient was casual. In the instant case the claimant's contact with the AIDS patient was far removed from a casual contact. She was required to bathe the patient and to give the patient an enema at the time of each visit. The claimant was understandably afraid to do this as a result of which she had the option of being discharged or resigning. There is some evidence in the record to the effect that a doctor gave the St. Joseph Hospital employees instructions as to how to deal with an AIDS patients (by wearing two pairs of gloves and a medical gown) but there is no competent evidence in the record that this would make the claimant completely free of any chance of contagion. In consideration of the evidence presented at this hearing the claimant was understandably and justifiably fearful of the assignment given her and she refused the assignment for that reason. This refusal was in violation of the employer's rules and brought about the claimant's discharge. The claimant's fear was genuine, her refusal to perform the assignment was understandable, and does not reflect gross misconduct or any concept of misconduct. The determination of the Claims Examiner shall be reversed.

#### DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with her work within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment with St. Joseph Hospital. The determination of the Claims Examiner is reversed.

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Bernard Street  
Hearing Examiner

Date of Hearing on June 15, 1988:

ldd  
3726(Specialist I.D:40310)

Copies Mailed on June 27, 1988 to:

Claimant  
Employer  
Unemployment Insurance - Eastpoint (MABS)