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.: 119-BH-86

Date: February 25, 1986

Claimant: Susan M. Kidwell

Appeal No.: 8511002

S. S. No.:

Employer: Mid-Atlantic Hambro, Inc.
ATTN: Boslev Tawney, VP

L.O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the 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 MAY BE 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 March 27, 1986

— APPEARANCES —

FOR THE CLAIMANT:

Susan Kidwell - Claimant

FOR THE EMPLOYER:

Bosley Tawney-
Vice-President

EVALUATION OF THE 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 receptionist at a salary of approximately $5.00 per hour. She worked from February of 1985 through August 23, 1985, at which point she went on vacation. When the claimant was about to return from vacation on August 30, 1985, the employer discharged her.

The claimant was hired as a receptionist in an office with high visibility and in which she came in contact with important clients of the employer. When she applied for the job she wore standard office dress and was told that she would have to dress in such a way as to give an atmosphere of professionalism to the office.

The claimant, after she was hired, began to wear slacks, T-shirts and tennis shoes. The employer began talking to her in a very informal way about upgrading her appearance. She was repeatedly told that the use of tennis shoes, T-shirts and blue slacks was not acceptable. The claimant's failure to meet the employer's expectations with respect to her attire was not in any significant way related to a medical condition of the claimant.

Over a period of time, the claimant was repeatedly warned. These warnings, however, were always informal and verbal. Although the claimant should have known that she was being told that she would be fired if she did not upgrade her attire, she was not specifically told these words and she did not so understand the numerous warnings.

When the claimant was on vacation, a temporary receptionist was hired. This receptionist dressed in a professional manner acceptable to the employer and reminded the employer so strongly of the claimant's unacceptable manner of dress that the employer decided to terminate the claimant.

DISSENTING OPINION

The claimant was employed as a receptionist earning $4.75 per hour on February 25, 1985. Her last day of work was August 23, 1985. The claimant was discharged on August 30, 1985.

According to her supervisor, the claimant did a "great job," and there were no complaints as to the manner in which she discharged her duties. However, the claimant was fired for failing to abide by the employer's written dress code which was adopted in May, 1985. The dress code provided:

> Dress Code: All personnel are expected to dress in such a fashion as to impart an air of professionalism. Gentlemen are expected to wear shirts and ties. Members of the drafting department will not be expected to wear ties unless they have official company business to conduct.
>
> Ladies are expected to maintain a similar professional attire.

The claimant did not receive a copy of the dress code, and was not present at meetings where it was discussed.

The claimant always wore slacks and sweaters. She did not own any dresses or skirts. Other female employees also wore slacks. Wearing dresses was not necessary so long as employees dressed in such a manner as to "impart an air of professionalism." Toward the end of this employment, the claimant wore tennis shoes because they felt more comfortable as she was under the care of a physician for swelling in her feet. The claimant reported her reason for wearing tennis shoes to a supervisor who did not protest.

The claimant's supervisor spoke with her on several occasions about her mode of dress. However, the claimant was never informed that her job was in jeopardy because of the clothes she wore.

While the claimant was on vacation, the employer hired a temporary receptionist. The claimant's supervisor was so infatuated with the temporary employee's manner of dress and "professional" style until he called the vacationing claimant and advised that she was fired.

The employer's dress expectations were reasonable. The employer explicitly stated to the claimant that he was not requiring her to purchase expensive clothes but that it was simiply necessary to stop wearing T-shirt type tops and tennis shoes.

CONCLUSIONS OF LAW

The Board of Appeals concludes that it was a reasonable requirement of the employer that the claimant dress in a professional manner, especially considering the claimant's position of high visibility within the office. The employer made this requirement known to the claimant at the time of hiring and on several occasions during her employment. The employer was not requesting that the claimant purchase expensive clothes which she could not afford. The claimants medical condition did not account in any great degree for her failure to comply with the dress code. In these circumstances, the claimant's failure to adhere to the dress code constituted misconduct within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. This is not gross misconduct, however, because it does not show a gross indifference to the employer's interest. The claimant's belief that her employer was not really serious was entirely unreasonable, but in the light of the fact that there were no specific written warnings with respect to the incident, the Board will not find the element of gross indifference.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits for the week beginning August 18, 1985 and the six weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:W

Without reaching the issue of the vagueness of the dress code, I conclude that the claimant's wearing tennis shoes to work was justifiable and reasonable in light of all the circumstances and cannot be considered misconduct under the unemployment insurance law. See, Frumento v. Unemployment Compensation Board of Review, 466 Pa. 81, 351 A.2d 631 (1976).

Moreover, in Lattonzio v. Unemployment Compensation Board of Review, 461 Pa. 392, 336 A.2d 595 (1975), a claimant for unemployment compensation was fired because he refused to get a hair cut and to shave his beard and sideburns to conform with "acceptable standards in the community." He had been employed as a "crew leader" who supervised the installation of fire and burglar alarms throughout the community, and dealt directly with the employer' s customers and the public. He had also been an excellent employee and the employer had 110 complaints as to the manner in which he discharged his duties. The Supreme Court of Pennsylvania held that in the absence of an allegation that the claimant was untidy, unclean or in any way offensive to reasonably acceptable health standards, the employer's expression of preference of one accepted mode of dress or appearance over another equally accepted style, where no relationship was established between the preference and performance of the duties involved, did not justify denial of benefits for failure to comply. The Court identified the issue as the "personal right of an individual to determine his personal appearance." The Court noted that under the present state of the law, private employers had wide latitude in expressing their personal bias and sensitivities in their hiring practices. However, the Court continued, this allowance of latitude to employers in the selection of employees does not justify a restrictive interpretation of a legislative remedial enactment designed specifically to help those who are unemployed.

Here, there is no allegation that the claimant was untidy, unclean, slovenly, or in any way offensive to reasonably acceptable health standards. And, despite the employer's objections to her mode of dress, she did a "great job" without any complaints as to the manner in which she discharged her duties. Thus, the employer failed to establish a relationship between its dress code and the performance of the claimant's duties.

For these reasons, I would affirm the decision of the Hearing Examiner that the claimant's failure to abide by the employer's dress code did not rise to the level of misconduct under the unemployment insurance law.

Maurice E. Dill

Associate Member

D
kmb
DATE OF HEARING: January 21, 1986

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: mailed NOV. 4, 1985

Claimant: Susan M. Kidwell

Appeal No.: 11002

S. S. No.:

Employer: Mid Atlantic Hambro

LO. No.: 1

Appellant: Claimant

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 NOV. 19, 1985

— APPEARANCES —

FOR THE CLAIMANT: Claimant-Present

FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant was discharged from her job as a Receptionist, because the employer was dissatisfied with the claimant's work performance and the manner in which she was dressed for work. The claimant had never been told by her employer that he. was dissatisfied with her work performance but had given her a raise of $5 an hour at the end of last June. The claimant never was informed by her employer that he was dissatisfied with her manner of dress until she had been discharged. The claimant usually came to work dressed in slacks and a sweater. The claimant had never been warned by her employer that this attire

did not meet the employer's required professional attire expected of the female members of his-staff.

CONCLUSIONS OF LAW

It is concluded from the undisputed evidence that the claimant was discharged for reasons other than misconduct connected with the work within the meaning of Section 6(c) of the Law. No probative evidence was submitted to challenge to to dispute the claimant's sworn testimony denying any wrongdoing on her part regarding her obligations to her employer. No probative evidence was submitted to challenge or to dispute the claimant's sworn testimony denying that she had ever been warned by her employer that he was in any way dissatisfied with her work performance or her attire in coming to work.

DECISION

The claimant is unemployed because she was discharged for reasons other than misconduct connected with the work, within the meaning of Section 6(c) of the Law.

Benefits are payable to the claimant as of September 1, 1985, if she was otherwise eligible under the Maryland Unemployment Insurance Law. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is revered.

Sanford Hordes
Hearings Examiner

Date of hearing: 10/29/85
rc
(8077-B)-Parker
Copies mailed on 11/4/85 to:

Claimant
Employer
Unemployment Insurance - Baltimore