

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
*Telephone: (301) 333-5032*

*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	1198-BR-91
	Date:	Sept. 30, 1991
Claimant: Stephen Denorey	Appeal No.:	9111785
	S. S. No.:	
Employer: Genstar Stone Products Co. c/o ADP ATTN: Gabrielle Allen	L. O. No.:	50
	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.

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— 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 CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

October 30, 1991

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

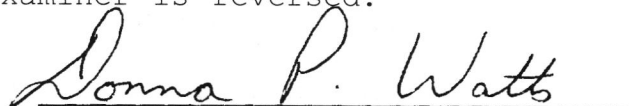
Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner. The Board adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts warrant a different conclusion of law.

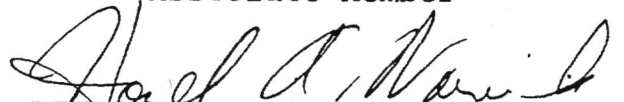
The claimant was required, pursuant to the contract between the employer and the union, to submit to a physical fitness for duty exam. The claimant refused. The claimant's action was a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest. The claimant's action falls within the definition of gross misconduct defined in Section 6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 16, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,150) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Associate Member

DW:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

OUT-OF-STATE CALIMS

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner*  
*Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

*Telephone: 333-5040*

**— DECISION —**

	Date:	Mailed:	08/15/91
Claimant:	Stephen A. Denorey	Appeal No.:	9111785
	S. S. No.		
Employer:	Genstar Stone Products Co. c/o ADP	L.O.No.:	50
	Appellant:		Employer

**Issue:**

Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning

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**— NOTICE OF RIGHT TO PETITION FOR REVIEW —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAYBE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 August 30, 1991

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**— APPEARANCES —**

FOR THE CLAIMANT:

Claimant - Not Present

FOR THE EMPLOYER:

Represented by:  
Donna Henry  
Gardiner,  
Compensation  
Assistance;  
Gabrielle Allen, ADP  
Gerald Askin, Esq.  
Representing ADP

## FINDINGS OF FACT

The Benefit Determination mailed to the parties provided that the last date to file a timely appeal was March 19, 1991. In this case, the claimant wrote and mailed a letter of appeal dated March 14, 1991. This letter of March 14, 1991 was never received by this Agency. The agent for the employer then wrote a follow up letter on July 8, 1991 asking what happened to the employer's appeal. The appeal was then scheduled. This Hearing Examiner finds the employer's representative testimony credible as to the previous mailing. The witness testified that she personally mailed the request for appeal in a timely manner at the Towson Post Office. This appeal will be timely.

The claimant worked for the employer from May 22, 1984 to September 1, 1990. He was employed as a mixer operator and earned \$12.49 per hour full-time.

The claimant was discharged on or about September 21, 1991 for refusing to take a medical examination to determine the claimant's physical fitness for duty. The employer and the union have a contract whereby for reasonable cause, the employer can request that an employee take a test to determine the claimant physical fitness for duty. The claimant had received several written warning for tardiness and absences in the year prior to the request. The request by the employer was reasonable.

The claimant was told that he must present himself for a physical examination. The claimant refused. As a result of the claimant's refusal, the claimant was discharged by the employer.

The claimant was not present via telephone to present evidence at this hearing.

## CONCLUSIONS OF LAW

The employer filed a valid and timely appeal, within the meaning and intent of Article 95A, Section 7(c)(3) of the 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. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113).

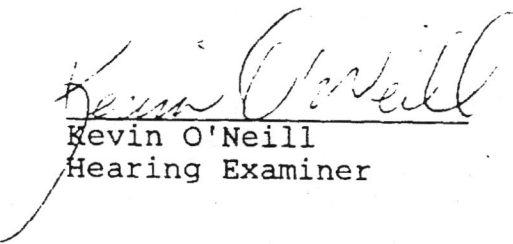
In the instant case, the claimant was requested to take a medical examination. This was not part of the claimant's job duties in order to remain qualified for the job. The claimant was already qualified for the job. However, pursuant to the union contract, the employer does have the right to request any employee with reasonable cause to take a physical examination to determine their fitness for duty. The claimant's refusal to do so is simple misconduct, within the meaning of Section 6(c) of the Law since the refusal does not make the claimant unqualified for his position.

#### DECISION

The claimant was discharged for misconduct connected with the work, within the meaning of 6(c) of the Law. He is disqualified from receiving benefits from the week beginning September 16, 1990 and the nine thereafter.

The determination of the Claims Examiner is affirmed.

The employer has filed a valid appeal, within the meaning of Section 7(c)(3) of the Law.

  
 Kevin O'Neill  
 Hearing Examiner

Date of Hearing: 8/8/91  
 ec/Specialist ID: 50520  
 Cassette No: 7922B  
 Co-pies mailed on 08/9/91 to:

Claimant  
 Employer  
 Out-of-State Claims (MABS)

 **Maryland**  
Department of Economic &  
Employment Development

William Donald Schaefer  
Governor  
J. Randall Evans  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201

August 20, 1991

Stephen A. Denorey

In Re: Stephen A. Denorey  
Appeal No. 9111785  
S.S.NO. 181-50-4252

Dear Mr. Denorey:

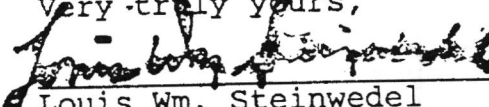
The purpose of this letter is to advise you of an error in an appeals decision recently mailed to you. The correct information has been entered in the records/decision which is maintained by the Appeals Division. In regards to your decision, the following correction has been made:

DECISION:

"He is disqualified from receiving benefits from the week beginning September 16, 1990 and for the nine weeks thereafter."

Please make the appropriate change or notation on your copy of the decision for future reference.

Very truly yours,

  
Louis Wm. Steinwedel  
Chief Hearing Examiner

WRM/ec

cc: Genstar Stone Products Co.  
c/o ADP.  
Joppa Road @ Mylander Lane  
Towson, MD 21204

Unemployment Insurance - College Park (MABS)