



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.:	1213-BR-90
	Date:	Nov. 30, 1990
Claimant:	John Hanlin, Jr.	Appeal No.: 9011932
	S. S. No.:	
Employer:	Jake's Service Station ATTN: Marshall Wilson	L.O. No.: 3
	Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

December 30, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 claimant in this case was accused by his employer of forging credit slips for customers and pocketing the cash which the customers gave him.

The claimant's own testimony is in conflict as to what occurred after he left the employment. He testified that his lawyer submitted an Alford plea and, as a result, he had agreed to pay the employer \$197. The \$197 corresponded to a forged credit card slip that "could have been" done by the claimant. At the same time, and in complete contradiction of the statements above, the claimant testified that he had not been prosecuted for these alleged offenses.

The Hearing Examiner found both that the claimant submitted an Alford plea and that he was not prosecuted. This is impossible. An Alford plea is a plea of guilty to a criminal offense for which the defendant is charged. An Alford plea is a guilty plea, entered upon voluntarily, with a full knowledge of the crime alleged and of the possible consequences of pleading guilty to it. It has no legal effect any different than any other plea of guilty to a criminal charge. The Alford case stands for the proposition that the judge can accept a knowledgeable and voluntary guilty plea, even where the defendant, in the very act of pleading guilty, still maintains that he did not actually do the act. See, North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970); Williams v. State, 10 Md. App. 270 (1970). Such a plea can be accepted and may be acted upon by the trial judge the same as any other guilty plea.

It is necessary to make a choice, therefore, between the claimant's testimony that he was not prosecuted and his testimony that he had filed a guilty plea to criminal charges.

The Board finds as a fact that the claimant did submit a guilty plea to the criminal charges. Under Alford, such a plea shall be given the effect of any other guilty plea, despite any simultaneous protestations of innocence. One of the effects of this guilty plea is that the judgment of guilty entered after such a plea can be used as evidence, in an unemployment insurance case, that the claimant actually did the act alleged.

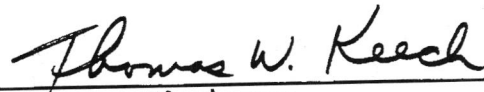
¹His statement that he had not been "prosecuted" could possibly be explained by the fact that there was no trial, and no incarceration.

In this case, the claimant has admitted that he pled guilty to the act of misconduct for which he was fired. Although it is regrettable that the employer failed to appear and present more concrete evidence in this case, the claimant's admission is sufficient for the Board to make a finding of fact that the claimant did, in fact, commit criminal forgery in the course of his employment. This meets the definition of gross misconduct.

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 August 12, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$790), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:DW

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



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 —

Mailed: 10./9/90

Claimant: John O. Hanlin , Jr.

Appeal No.: 9011932

S. S. No.:

Employer: Marshall E. Wilson, et al.

L.O. No.: 003

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) 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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON October 24, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

John O. Hanlin, Jr. - Present

Not Represented

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Cumberland effective August 12, 1990.

The claimant had been employed by Marshall E. Wilson on April 1,

1988 to August 14, 1990 as a service station attendant at a pay rate of \$3.80 per hour.

The employer suspended the claimant for forgery of charge slips. The claimant submitted to handwriting analysis which was not conclusive that he had forged any of the documents involved. The claimant submitted to a polygraph test which was not conclusive as to dishonesty but revealed some evasiveness or deception in answers. Upon advice of counsel, the claimant entered an Alford plea and agreed to repay \$197.00. An Alford is not an admission of guilt but is a method of avoiding potential prosecution for an alleged crime. The claimant has not been prosecuted for any crime, and he denies stealing from the employer or forging any documents.

CONCLUSIONS OF LAW

In the absence of probative evidence from the employer to the contrary, the only evidence I have in this matter is the claimant's denial of any culpability in the alleged commission of any crime against the employer. Sole evidence is that the employer suspected the claimant of a wrongdoing and discharged him based upon this suspicion without probative evidence of wrongdoing or guilt. Accordingly, I have no alternative but to set aside the disqualification as entered by the Claims Examiner and hold that the claimant should be allowed benefits.

DECISION

The claimant was discharged for a non-disqualifying reason pursuant to the provisions of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are allowed.


Robin L. Brodinsky
Hearing Examiner

Date of Hearing: October 4, 1990
km/Specialist ID: -3264
Cassette No: 7882
Copies mailed on October 9, 1990 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)