

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.: 1215 -BR-88
Date: Dec. 30, 1988
Claimant: Joseph E. Roberts
Appeal No.: 8809860
S. S. No.:
Employer: Maryland Medical Lab, Inc. L. O. No.: 7
ATTN: Francine Quint, Pers. Dir.
Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct, connected with his 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 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 AT MIDNIGHT ON January' 29, 1989

— 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 on the issue of misconduct.

Although the Hearing Examiner failed to make a determination on the issue of a timely appeal under Section 7(c)(3), the Board finds from the evidence on the record that the appeal filed by the employer was timely.

The Board finds that the claimant was a competent technician who was trained in the use of the computer and the procedures involved in his job. As a result of a number of errors committed by the claimant, a rate well in excess of that expected of a competent trained technician, the Board finds that the claimant was negligent in the performance of his duties. The claimant's errors clearly could have resulted in serious injury to patients for whom the testing was performed. The errors were the result of negligence in entering data into a computer on which the claimant was trained. Several meetings were held between the claimant and his supervisors during which the claimant was warned regarding his error rate. The errors, however, increased. There is no evidence on the record that the claimant was incapable of performing the job requirements.

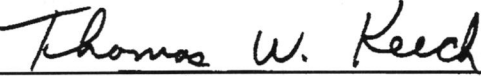
When a claimant's work involves critical risks to the life and health of other persons, a higher degree of care is required. A claimant's repeated negligence in the performance of his job duties, after warnings, which could result in serious injury, clearly constitutes gross misconduct. Bockai v. Suburban Hospital, 728-BR-85.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning April 17, 1988 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of her own. The decision of the Hearing Examiner is reversed.



Associate Member



Chairman

H:K
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

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

STATE OF MARYLAND
William Donald Schafer
Governor

--- DECISION ---

Date: Mailed: Nov. 7, 1988

Claimant: Joseph E. Roberts

Appeal No.: 8809860

S.S. No.:

Employer: Maryland Medical Lab, Inc.
Attn: Personnel

L.O. No.: 7

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 of Section 7(c)(3) 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 COURT OR WITH THE APPEALS DIVISION, ROOM 318, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

November 22, 1988

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

NOTICE. APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Joseph E. Roberts - Claimant

Douglas Koteen -
Attorney; Francine
Quint - Personnel
Director; Priscilla
Kittle - Head of
Hematology

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective April 24, 1988.

The claimant was employed by the Maryland Medical Lab, Inc., from on or about May 18, 1987 to April 20, 1988, his last job classification as a technician at an hourly wage rate of \$12.

The claimant was employed from the strength of his previous employment application and resume presented to the employer.

The employer became dissatisfied with both his quantity and quality of work. Several conversations were held with management concerning the amount of work performed and the number of errors the claimant was permitted according to the employer's established procedure and manual, and after the claimant successfully completed a training program.

The claimant never went to the hiring authority to complain about any conditions of the work place or that he was being treated unfairly on his work assignments. The claimant never went to the hiring authority to complain that he had problems with working any of the employer's equipment, including the computer system.

A conversation occurred on or about February 29, 1988, in effect, giving the claimant a second chance pointing out the employer's dissatisfaction over both his work quality and quantity and re-arranging his schedule in order that the claimant could fulfill his wishes about working a second job and going to school. At that time, another review was promised but before that review occurred, the employer decided to terminate the claimant due to his error rate as compared to other co-workers; and the jeopardizing of the business relationships with clients brought about by the required communications to correct the errors, and the employer's feeling that the errors were jeopardizing patient care.

The claimant has worked in hospital clinical laboratory atmosphere performing the same type work. This employment was an attempt by the claimant to work outside that atmosphere in a privately run laboratory.

The employer failed to provide proper documentation other than paper work showing that the claimant committed the errors and failed to produce the actual laboratory work when asked to do so by the claimant in order for the claimant to determine whether such errors were due to lack of technical skills or knowledge.

CONCLUSIONS OF LAW

As the claimant was aware of the employer's dissatisfaction over both the quality and quantity of the work, and he failed to correct his quality of work as that employer requested, the claimant's acts demonstrate misconduct in connection with his

work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. In the instant case, the claimant has excellent credentials and work history in a hospital clinical laboratory atmosphere. It is apparent that the claimant could not adapt to private industry's atmosphere doing the same type of work, for he committed many errors in either technical skills or clerical mistakes. His inability to correct both his quality and quantity of work without raising any objection to any of the conditions of the work place to the hiring authority demonstrates misconduct in connection with one's work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

However, it does not demonstrate gross misconduct in connection with one's work, for the employer was aware of the claimant's shortcomings and continued to allow the claimant to work, even to change his schedule in order to accommodate the claimant in pursuit of going to school and a second job. The argument that his errors were life threatening under these circumstances is not valid.

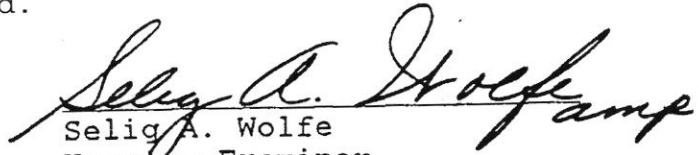
There are also mitigating factors present to warrant the imposition of a disqualification less than the maximum permitted under Section 6(c) of the Maryland Unemployment Insurance Law, for the employer failed to properly show the slides and/or other documents which would show to the claimant that it was his error either in technical skills or clerical skills causing severe problems.

DECISION

The claimant was terminated from his employment for acts demonstrating misconduct in connection with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The claimant is denied unemployment insurance benefits for the week beginning April 17, 1988 and the four weeks immediately following thereafter.

The determination of the Claims Examiner is reversed.

The Employer's Protest is sustained.


Selig A. Wolfe
Hearing Examiner

Date of hearing: 10/19/88

amp/Specialist ID: 07205

Cassette No. 6995, 6994

Copies mailed on November 7, 1988 to:

Claimant

Employer

Unemployment insurance - College Park (MABS)

Douglas Koteen, Esquire