

 **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.:	123 -BH-90	
	Date:	Feb. 8, 1990	
Claimant:	Karen L. Rayfield	Appeal No.:	8912553
		S. S. No.:	
Employer:	Elite Communications	L. O. No.:	15
		Appellant:	CLAIMANT
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, 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 March 10 , 1990

— APPEARANCES —

FOR THE CLAIMANT:

Karen Rayfield - Claimant

FOR THE EMPLOYER:

Markeya Ford -
Credit Manager
Jacqueline Johnson-
Assistant Credit
Manager

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.

The outcome in this case depends in great part on the true reason for which the claimant was discharged. The claimant alleged that she was discharged for asking a question at a meeting, while the employer alleged that the claimant was discharged for excessive absenteeism and lateness.

The Board made its decision based on the overall credibility of both parties. In this regard, the Board notes that the employer has given the Unemployment Insurance Administration three different reasons for the claimant's termination. First, by letter of September 23, the employer stated that the claimant was discharged for insubordination. Then, the employer advised the agency by telephone on September 28, that the claimant was not terminated for insubordination but was discharged because she was a temporary employee and her services were no longer needed. Then, in a letter dated October 4, the employer stated that the claimant was insubordinate. In that October 4th letter, for the first time, the employer alleged that the claimant was fired for an attendance and lateness problem. The Board also notes that the employer gave the claimant a paper which listed two reasons for termination, then later retrieved the paper and whited out one of the reasons. Neither of these reasons had anything to do with attendance or lateness.

The essence of the claimant's case was that the employer's representative, Markeya Ford, became upset when the claimant questioned her at an open meeting, then discharged her for that questioning shortly after the meeting. The claimant's case was greatly strengthened by the demeanor of the two witnesses before the Board. The claimant's presentation appeared straightforward; but the employer's witness, Ms. Ford, resisted strongly, even at the hearing, the requirement that she answer the claimant's questions on cross-examination. After that testimony, it appeared quite plausible to the Board that the employer's witness had become unreasonably upset upon being questioned by the claimant at the workplace.

FINDINGS OF FACT

The claimant was employed from August 15, until September 12, 1989. She was first hired as a data entry clerk, earning \$7.25 per hour. The employer described this business as a "dating service." After actually working on the job for one day, the claimant informed her employer that she had religious objections to the kind of work she was doing. She offered to resign, but she was given an opportunity to transfer to the credit department. She was offered a lower rate of pay, \$6.00 per hour, and was told that this was the starting salary for anyone who first enters the credit department.

The employer had no written attendance policy, nor any comprehensive attendance or lateness policy at all. Neither did the employer have any sick leave, vacation leave or holiday pay. Following the claimant's first day of employment, she was late a total of four minutes. She was excused one entire day because she required about an hour and a half off to attend to some emergency personal business. She missed another day because she had to appear in court. For this court appearance, she had secured prior approval and permission from her employer. She had notified her employer whenever she needed to miss time. The claimant was never given any warnings that there was anything wrong with her attendance. About a week before her last day of work, the employer had a general meeting about attendance at which a recently developed employer's handbook was passed out. Following that meeting, the claimant missed no time at all except for her court day, for which she had previously been given permission.

Without the knowledge of Ms. Ford, the supervisor of the unit, the owner of the business raised all the employees in the credit department to a wage level of \$7.00 per hour. Even the employees were surprised, and they were not sure whether it was a mistake or not. They mentioned these raises to Ms. Ford, who responded in essence that she would do everything in her power to have the raises rescinded. A meeting took place between the employees in the unit and Ms. Ford. At one point in the meeting, Ms. Ford stated that the raises were unfair because, as some employees were making \$6.00 an hour and some were making \$6.50, the raise amounted to a \$1.00 raise for some but only a \$.50 raise for others. She said this in such a way that it became apparent that all those who entered the credit department had not entered at the \$6.00 level. The

claimant asked her whether this was true. Ms. Ford responded in an equivocal way. Soon after the meeting, Ms. Ford took the claimant aside and fired her. She was told various reasons for her discharge, but absenteeism and lateness were never mentioned.

The real reason that the employer fired the claimant was the employer's representative's anger at the claimant for asking her this question at the meeting. Under all the circumstances, however, the claimant's question was reasonable, and her actions were not insubordinate.

The Board finds as a fact that the claimant was not fired for attendance or lateness problems. In any case, insufficient evidence has been provided to find that the claimant's absences were unauthorized or in violation of any company policy, or that her lateness was of any significance.

CONCLUSIONS OF LAW

The claimant was discharged because she asked a question concerning salaries at a meeting called to discuss salary matters. No credible evidence has been presented to show that the question was unreasonable or was asked in an unreasonable manner. Since the claimant's action was reasonable, the Board will conclude that the claimant was discharged, but not for any misconduct, within the meaning of Sections 6(b) or (c) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from Elite Communications. The claimant may contact her local office concerning the other eligibility requirements of the Law.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:D

kmb

DATE OF HEARING: February 6, 1990

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Elite Communications
ATTN: Markeya Ford, Credit Mgr.
P. O. Box 629
Reisterstown, MD 21136

UNEMPLOYMENT INSURANCE - WESTMINSTER

 **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: 11/16/89
Claimant: Karen L. Rayfield	Appeal No.:	8912553-EP
	J. S. No.:	
Employer: Elite Communications	LO. No.:	15
	Appellant:	Employer

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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 51 5, 1100 NORTH EUTAW STREET BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL

12/1/89

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Markeya Cord,
Credit Manager

FINDINGS OF FACT

The claimant was employed from August 15, 1989, at the time of separation was a Credit Consultant at a pay rate of \$6 per hour for full-time employment. On September 12, 1989, the employer told the claimant that she was to be discharged and explained that to preserve the claimant's future employability the employer

would consider her a temporary employee who had simply not completed the three month probation. When the claimant pressed for more specific reasons, she was told that the employer was discharging her because she was not meeting employer's attendance standards. The claimant had been late at least three times and absent twice during her short-lived, one-month employment. Although the employer was somewhat dissatisfied with the claimant's work performance (the claimant could do the job required of her) and the claimant's attitude, it was the poor attendance that caused the decision to discharge her.

CONCLUSIONS OF LAW

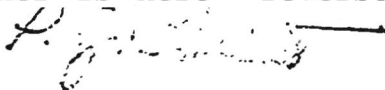
It is held that the claimant was discharged for misconduct connected with the work, within the meaning and intent of Section 6(c) of the Maryland Unemployment Insurance Law. She will be disqualified under that provision of the Statute.

The determination of the Claims Examiner which allowed benefits will be reversed.

DECISION

The claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning September 10, 1989 and the nine weeks immediately thereafter.

The determination of the Claims Examiner is here reversed.



P.J. Hackett
Hearing Examiner

Date of hearing: 11/3/89

rc

(9167-B & 9168-A) -Specialist ID: 15701

Copies mailed on 11/16/89 to:

- Claimant
- Employer
- Unemployment Insurance - Westminster - MABS