

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT



BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

William Donald Schaefer, Governor
J. Randall Evans, Secretary

— DECISION —

	Decision No.:	126 -BR-88
	Date:	Feb. 11, 1988
Claimant:	Appeal No.:	8708171
	S. S. No.:	
Employer:	L.O. No.:	1
	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 THE LAWS OF MARYLAND. THE APPEAL MAYBE 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.

March 12, 1988

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 Board adopts the findings of fact of the Hearing Examiner.

Although the claimant had a poor work record, the Hearing Examiner found as a fact that he was actually discharged for filing a request for arbitration. The employer's documentary evidence (see, Employer's Exhibit #1), and the employer's own testimony support the finding that the claimant was fired because he filed a request for arbitration. The claimant's testimony was to the same effect.

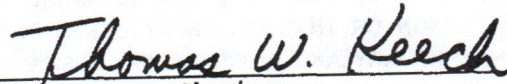
The exercise of a worker's rights under a grievance procedure is not misconduct. See, Cummings v. Rod 'N Reel Restaurant (725-SE-83), where a claimant was fired because she announced that she was going to file a complaint to the Equal Employment Opportunity Commission. The Board held in that case that the exercise of the claimant's right to complain to the E.E.O.C. was not misconduct within the meaning of Section 6(b) or 6(c) of the law. This case is similar, in that the exercise of the claimant's right to file for arbitration was not misconduct.

Since all parties apparently agree that the claimant was fired for this reason, and since this reason does not constitute misconduct, the Board must find that the claimant was discharged, but not for misconduct.

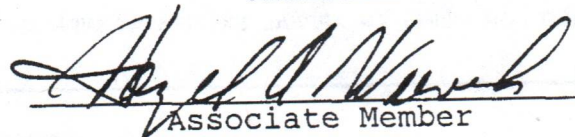
DECISION

The claimant was discharged, but not for misconduct or gross misconduct, connected with his work, within the meaning of Section 6(c) or 6(b) of the Maryland Unemployment Insurance Law. No penalty is imposed based on his separation from employment with the Housing Authority of Baltimore.

The Decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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

STATE OF MARYLAND
William Donald Schaefer
Governor

- Remand -
— DECISION —

Claimant: Rhaubi A. Weambe
Date: Mailed December 15, 1987
Appeal No.: 8708171
S. S. No.:
Employer: Housing Authority of Baltimore City
ATTN: Charles Spinner
LO. No.: 01
Appellant: EMPLOYER

Issue: Whether the claimant was discharged for misconduct connected with the work within the meaning of Seciton 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON December 30, 1987
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:

Present

FOR THE EMPLOYER:

Represented by
Robert E. Weaver,
Superintendent; and
Charles Spinner,
Personnel Technician
Supervisor

This case was remanded to the Hearing Examiner for a new decision.

FINDINGS OF FACT

The claimant filed a claim for benefits, effective July 5, 1987 according to Agency records.

The claimant was employed by the Housing Authority of Baltimore City as a painter from March 31, 1986 until his last day of actual work, June 15, 1987. He earned \$8.97 an hour.

The claimant was given a written warning dated September 25, 1986, because he allegedly reported to work late on September 24, 1987. He was told in this warning that if no improvement had not been made to correct this habitual lateness, more discipline action could be taken, such as a six-month probationary period, suspension and/or recommendation for termination of his position.

On September 25, 1986, the claimant reported to work on time and left with his helper to go to his job assignment at 7:45 a.m. The claimant did not report to the work site until 11:15 a.m. As a result of this, he was placed on LWP for 3.5 hours and also placed on a six-month probationary period.

On January 13, 1987, the claimant was assigned to the Mason Apartments. He returned from lunch 42 minutes late and was given a violation of probationary period, three-day suspension.

On January 22, 1987, as a result of filing a grievance, the memorandum dated September 25, 1986 concerning his failure to report to work on time, that is on September 24, 1986, was rescinded and removed from his record.

The written memorandum placing him on probation for a six-month period was downgraded to a written warning, in lieu of probation. He was placed on a three-day suspension and charged two days of universal leave, due to his returning to his work site 42 minutes late and his unauthorized use of an HABC vehicle.

On April 2, 1987, the claimant left his job at noon on April 2, 1987 and did not report to work on April 3, 1987, as a result of this, he was terminated.

The claimant filed a grievance and after third step hearing with regard to his suspension and discharge effective April 9, 1987, he was reinstated to his position as a painter, effective June 1, 1987 under the condition that he serve six months probationary period, complete all work assignments and not leave your work site without authorization his supervisor.

The claimant was not satisfied with this as he didn't get back pay and, his union president stated that he wished to proceed with arbitration in the matter.

As arbitration cannot be carried on with an employee, the claimant was suspended and terminated effective June 15, 1987 by the employer.

The claimant admitted that he was late at least three or four times.

CONCLUSIONS OF LAW

The Maryland Court of Appeals held that in the case of Watkins v. Employment Security Administration, 266 Md 223, 292 A 2d 653 (1972) that the claimant's repeated persistent and chronic absenteeism where absences are without notice and excuse and continue in the face of warning constitutes gross misconduct.

It is found that the claimant was absence from his job on November 18, 1986 for three and one-half hours and late 42 minutes in returning from lunch on January 13, 1985.

In addition, the claimant admitted that he was late on at least three occasions.

In view of all the warnings given the claimant, in regards to lateness and absenteeism from the job. His lateness and absenteeism constitute gross misconduct connected with the work within the *meaning of Section 6 (b) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner will be reversed.

DECISION

The claimant was discharged for gross misconduct connected with the work within the meaning of Section 6 (b) of the Law. Benefits are denied for the week beginning June 14, 1987 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1880), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.
HEARING EXAMINER

DATE OF HEARING - 9/3/87
cd
5251/James

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Claimant
Employer
Unemployment Insurance - Baltimore (MABS)