



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIFF
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 144 -BR-87

Date: February 27 , 1987

Claimant: Thomas C. Proctor

Appeal No.: 8611134

S. S. No.:

Employer: Atlas Pontiac

L.O. No.: 20

Appellant: CLAIMANT

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON March 29 , 1987

— 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 concludes that the claimant's one mistake, which occurred after he had worked only 31 days, does not constitute misconduct, connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

The claimant testified unequivocally that he was not instructed in how to unlock the garage door. The employer's witness could only reply that she "believed" that he was so instructed.

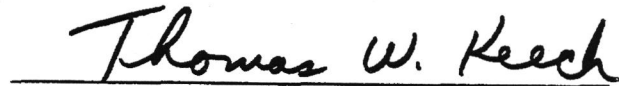
Further, the Board has held that an instantaneous lapse in the performance of job duties does not constitute misconduct, Darnell v. St. Mary's Nursing Home, 549-BH-83.

DECISION

The claimant was discharged, but not for misconduct, connected with the work, within the meaning of Section 6(c) of the Law. No disqualification is imposed based upon his separation from employment with Atlas Pontiac. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

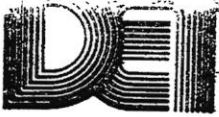
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WALDORF



STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Claimant: Thomas C. Proctor
Post Office Box 395-A
Newburg, MD 20664

Date Mailed: 10/24/86

Appeal No.: 8611134-EP

S. S. No.: 217-84-2182

Employer: Atlas Pontiac
15113 Crain Highway
Brandywine, MD 20613

L.O. No.: 20

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 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 A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON 11/10/86

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

Represented by
Jeanne Johnson,
Comptroller

FINDINGS OF FACT

The claimant was employed by Atlas Pontiac for a period of three days as a get ready person, washing cars, otherwise preparing a car for delivery to a customer. His rate of pay was \$4.00 an hour.

The claimant was discharged after three days of work, because he attempted to open an overhead garage door by activating the electronic switch without unlatching the door at the ground. As a

result, \$2500 damage was caused to the door.

Until that day, the, claimant did not have an opportunity to unlock and activate the overhead doors in the morning. He had been instructed that it had to be unlatched first.

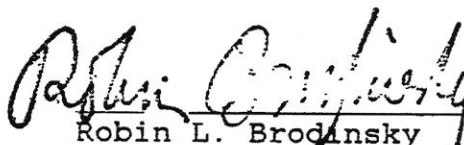
CONCLUSIONS OF LAW

Upon weighing and reviewing the testimony presented, it is concluded that the claimant was negligent or careless in the performance of his duties by causing damage to an overhead garage door by failing first to unlatch it from the ground before activating the motor. While such action constitutes "misconduct connected with the work," there is no evidence that the claimant's actions were deliberate and willful or a gross indifference to the employer's interest. Therefore, no penalty is warranted under gross misconduct connected with his work. An appropriate disqualification is warranted under Section 6 (c) of the Law for ordinary "misconduct connected with the work."

DECISION

It is held that the claimant was discharged for misconduct connected with his work within the meaning of Section 6 (c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning August 17, 1986 and the five weeks immediately following.

The determination of the Claims Examiner is reversed.


Robin L. Brodinsky
HEARING EXAMINER

DATE OF HEARING - 10/20/86
CD

6293/Jones

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Claimant
Employer
Unemployment Insurance - Waldorf