



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

STATE OF MARYLAND  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

**383-5032**

**—DECISION—**

STATE OF MARYLAND  
HARRY HUGHES  
Governor

BOARD OF APPEALS  
THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E DILL  
Associate Members

DECISION NO.: 146-BH-84 · SEVERN E LANIER  
Appeals Counsel

DATE: February 10, 1984

APPEAL NO.: 23441-EP

S. S. NO.:

L.O. NO.: 9

APPELLANT: CLAIMANT

CLAIMANT: Edward G. Sacco, Jr,

EMPLOYER: Jones Associates  
ATTN: Lawrence Jones, Pres.

ISSUE: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the Maryland Unemployment Insurance 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT March 11, 1984

**-APPEARANCE-**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Edward G. Sacco, Jr. - Claimant  
Charlene Getz  
Patricia Sacco  
Richard Jacobsen, Esq.

Not Represented

**INTRODUCTION**

This case was remanded to the Board of Appeals for the taking of additional testimony. A further hearing was held on October 18, 1983 at which time the claimant presented additional evidence.

## EVIDENCE CONSIDERED

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 into this case, as well as the Department of Employment and Training's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed by Jones Associates as a junior draftsman from March 3, 1981 until he was discharged on September 22, 1981.

On September 22, 1981, while at work, the claimant became involved in a physical altercation with his employer, Lawrence Jones. Although the employer was in a walking cast at the time, as the result of a prior injury, he instigated the fight by throwing his keys at the claimant. The claimant attempted to avoid a fight by walking away, but Jones followed him, pushed him, and grabbed hold of the claimant.

The claimant, in an attempt to extricate himself, repeatedly hit Jones with his fist. As a result, Jones suffered injuries to his arm, chest, and the back of his head and the claimant was fired.

## CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of §6(c) of the Law.

Although the claimant was certainly entitled to defend himself against the physical assault of his employer, the evidence shows that the claimant overreacted and used more physical force than was reasonable or necessary to defend himself. Although Jones had grabbed him, the evidence does not indicate that the claimant was in any real danger; nevertheless he repeatedly hit and injured the employer. Therefore his actions constitute misconduct.

However, the Board does not conclude that his actions amount to gross misconduct. The employer was clearly the initial aggressor and had provoked the claimant into attacking him. Therefore, the claimant's overreaction, while misconduct, does not rise to the level of gross misconduct within the meaning of §6(b) of the law.

## DECISION

The claimant was discharged for misconduct , connected with the work , within the meaning of §6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 20, 1981 and the nine weeks immediately following.

The decision of the Appeals Referee is reversed.

  
Associate Member

  
Associate Member

  
Chairman

W:D:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

Richard Jacobsen, Esq.



**DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES  
Governor

KALMAN R. HETTLEMAN  
Secretary

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT  
Chairman

HENRY G. SPECTOR  
HAZEL A. WARNICK  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 423-BR-82

DATE: April 15, 1982

APPEAL NO.: 23441

S. S. NO.:

CLAIMANT: Edward G. Sacco, Jr.

EMPLOYER: Jones Associates

L. O. NO.: 9

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.

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THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 15, 1982

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**-APPEARANCES-**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

After having reviewed the record in this case, the Board of Appeals adopts the facts and the reasoning contained in the decision of the Appeals Referee.

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 the receipt of benefits from the week beginning September 20, 1981, and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1200.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is affirmed.

  
Chairman

  
Associate Member

K:W  
raf

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Richard K. Jacobsen, Esquire

UNEMPLOYMENT INSURANCE - TOWSON