

 **Maryland**  
Department of Economic &  
Employment Development

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*Thomas W. Keech, Chairman*  
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- DECISION -

	Decision No.:	1535-BR-93	
	Date:	Sept. 17, 1993	
Claimant:	Alice L. Thompson	Appeal No.:	9313398
		S. S. No.:	
Employer:	East Coast Ice Cream	L. O. No.:	7
		Appellant:	CLAIMANT
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.		

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- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules..

The period for filing an appeal expires.

October 17, 1993

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- 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 of Appeals adopts the findings of fact of the Hearing Examiner but reaches different conclusions of law.

As part of a pre-employment physical on April 5, 1993, the claimant gave a specimen to be tested for drugs. The claimant then began employment on April 6th. On June 14, 1993, the claimant was discharged because it had been reported back to the employer that the claimant's test showed the presence of a controlled dangerous substance. The claimant was given all of the notices required by state law, as well as the required opportunity to have the sample retested at another lab. The claimant had, in fact, ingested the substance in question by using some painkiller pills prescribed for her father.

Although there is little doubt that the claimant committed misconduct, this misconduct was not "in connection with the employment, as required by the statute. See, §8-1003. There must be a breach of duty to the employer involved. Employment Security Board, v. LeCates, 218 Md. 202, 145 A.2d 840 (1958).

There is no evidence in this case that the claimant was under the influence of controlled dangerous substances at work. Since the drug test was taken prior to her first day of employment, there is no evidence that a controlled dangerous substance was in her system on any day of employment. There is no evidence that she falsified her application.

In the case of Gault v. W. B. Moore (349-SE-92) the claimant was hired conditionally upon the requirement that he pass a pre-employment physical, including a drug screen. After a few days of employment, the claimant was discharged because the pre-employment drug screen revealed the presence of cocaine in his system. The Board of Appeals ruled that the claimant was discharged because he was unsuitable for employment, but not because of misconduct connected with the work. The Board has ruled similarly in cases where a security guard, hired on the condition that the police would approve his application for a handgun permit, was later discharged when the police denied the permit because of the claimant's previous personal history.


The reasoning of these cases applies in this case. The claimant was discharged because she was found to be unsuitable for employment based upon her pre-employment physical, but not because of any misconduct connected with the work.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon her separation from employment with East Coast Ice Cream.

The decision of the Hearing Examiner is reversed.

  
Chairman

  
Associate Member

K:D

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK