

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.:	155-BR-93
Date:	January 29, 1993
Appeal No.:	9223377
S. S. No.:	
L. O. No.:	43
Appellant:	EMPLOYER

Claimant: Ira Allen

Employer: Sentinel Newspapers

Issue: Whether the claimant was discharged for misconduct, connected with the work within the meaning of §8-1003 of the Labor and Employment Article.

— 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

February 28, 1993

THE PERIOD FOR FILING AN APPEAL EXPIRES

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Hearing Examiner.

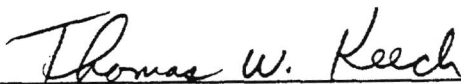
The crucial question in this case is whether the claimant quit or was discharged. There was testimony on both sides of this issue. The Hearing Examiner found the testimony of the claimant more credible on this issue. The Board rarely overturns the decision of the Hearing Examiner with regard to the credibility of the witnesses, and it will not do so in this case.

Even though a claimant is discharged in the heat of anger, the reasons for the discharge -- if they can be articulated -- should be examined to determine whether they amount to misconduct. The Board agrees that they do not amount to misconduct in this case. The claimants allegations about ethnic slurs were withdrawn from his memorandum prior to delivery, and he apologized when the publisher found out about them anyway. Under these circumstances, the allegations become moot. It is apparent that the claimant had an acerbic method of communicating with the employer, but this does not amount to misconduct. The claimant was not performing his editorial job to the employer's satisfaction, but there is no basis for a finding that this was due to deliberate misconduct or negligence on the part of the claimant. An employer who has discharged a claimant has the burden of showing that misconduct was committed, and that burden was not met in this case.

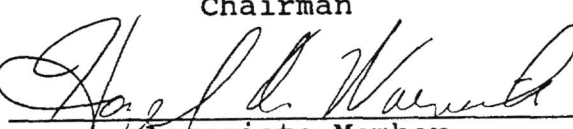
DECISION

The claimant was discharged, but not for misconduct, connected with the work, within the meaning of §8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with the Sentinel Newspapers.

The decision of the Hearing Examiner is affirmed.



Chairman



Associate Member

K:HW
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

Miles & Stockbridge

Alan Banov, Esq.

Bernard Kapiloff, M.D.

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
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Telephone: (410) 333-5040

— DECISION —

	Date:	Mailed 12/8/92
Claimant: Ira R. Allen	Appeal No.:	9223377
	S. S. No.:	
Employer: Sentinel Newspapers	L. O. No.:	43
	Appellant:	Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

— 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 BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

December 23, 1992

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

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, represented by
Alan Banov, Esq.

FOR THE EMPLOYER:

Dotty Horan, Exec.
Dir.
Bernard Kapiloff,
Publisher
Gregory Tucker,
Managing Editor
George Barney,
Witness

FINDINGS OF FACT

The claimant worked for the employer from June 29, 1992 through August 6, 1992. At the time of his separation from employment, the claimant was Acting Editor, earning \$12.02 per hour.

on the claimant's last day of work, the claimant and Dr. Kapiloff, the Publisher, engaged in a heated conversation about (1) management of the newspaper and, (2) racial, ethnic or religious remarks allegedly made by Dr. Kapiloff and his spouse. The remarks, if made, were not directed at the claimant.

A significant amount of testimony at the Hearing was devoted to the question of whether the claimant quit or was discharged during the course of this conversation. Based on testimony and a memorandum received into evidence as Claimant's Exhibit #1, it is clear that the claimant felt that the employer did not know how to run a newspaper and was outspoken about this. It is equally clear that Dr. Kapiloff was not happy with the claimant's attitude or performance, and was extremely upset about the claimant's contention that Mrs. Kapiloff had made an ethnic or religious slur. The claimant was discharged by the employer when he later became excited during the heat of argument. The factual finding is supported by the Hearing Examiner's observation of Dr. Kapiloff during the Hearing, at which time Dr. Kapiloff demonstrated a similar manner of excitability.

CONCLUSIONS OF LAW

It is concluded that the claimant was discharged from employment.

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). It has been held that dissatisfaction with an employee's work on the part of the employer does not constitute misconduct within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. (See, Chambers v. J.P. Mancini, Inc., 408-BH-84, Albaugh v. Good Samaritan Hospital, 186-BH-83, and Ellis v. Lana Fab Corp., 497-BH-85).

In the instant case, there is no evidence that the claimant's discharge was a result of misconduct within the meaning of the Law. In essence, the employer was not happy with the claimant, engaged in an argument with him and discharged him.

DECISION

It is held that the claimant was discharged, but not for misconduct connected with the work, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. No disqualification is imposed based on his separation from employment with Sentinel Newspapers, Inc. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.


Ruth A. Rodney
Hearing Examiner

Date of Hearing: 12/2/92
Specialist ID: 43726
ab/CASSETTE IN FILE

COPIES MAILED ON 12/8/92 TO:

Claimant
Employer
Unemployment Insurance - Wheaton (MABS)

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