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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor
EUGENE A. CONTI, JR., Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

RENARD EDWARDS

Employer:

THRIFT STRS WASH DC INC

Decision No.: 01622-BR-96

Date: May 23, 1996

Appeal No.: 9603428

S.S. No.:

L.O. No.: 07

Appellant: Claimant

Issue: Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the Md. Code Annotated Labor and Employment Article, Title 8, Sections 1002-1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

- 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 file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: June 22, 1996

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts warrant a different conclusion of law.




The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1 defines "Aggravated Misconduct" as intentional conduct by an employee in the workplace that results in a physical assault upon or bodily injury to or property loss or damage to the property of the employer, fellow employees, sub-contractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's product or services.

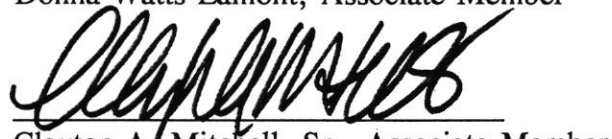
The claimant's action rise to the level of aggravated misconduct. The value of the property is not a determining factor. The claimant clearly intended to sell the T.V. (it was in fact sold by the claimant) and whether or not it was planned or a spur of the moment decision is not relevant.

DECISION

The claimant was discharged for aggravated misconduct, connected with the work, within the meaning of §8-1002.1 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning December 3, 1995 and until the claimant earns thirty times his weekly benefit amount and thereafter becomes re-employed.

The decision of the Hearing Examiner is affirmed.


Donna Watts-Lamont, Associate Member


Clayton A. Mitchell, Sr., Associate Member

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Copies mailed to:
RENARD EDWARDS
THRIFT STRS WASH DC INC
Local Office - #07

UNEMPLOYMENT INSURANCE APPEALS DECISION

RENARD EDWARDS

Before the:

SSN :

Claimant

vs.

THRIFT STRS WASH DC INC
C/O MARCENA J CAIN ,

Employer/Agency

Maryland Department of Labor,
Licensing and Regulation
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9603428
Appellant: Employer
Local Office: 07 / College Park

March 27, 1996

For the Claimant: PRESENT

For the Employer: SCOTT SHANAHAN, THOMAS GREEN

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated Labor and Employment Article, Title 8, Sections 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

FINDINGS OF FACT

The claimant went to work for the Thrift Stores of Washington, D.C.; Inc., on June 6, 1994 and his last day of work was December 8, 1995.

At the time of discharge the claimant was a Truck Driver earning \$7.25 per hour. On December 8, 1995, the claimant was discharged for an incident which occurred on December 6, 1995. The incident consisted of the claimant and his helper selling a TV set off of their employer's truck which they were not supposed to do. The claimant and the helper did offer a TV set for sale and a counter offer was made and he did sell it. The claimant knew that this was against all of the rules and regulations of his employer that anything he picked up on his various routes was to be taken back to the employer's premises and rehabilitated and not sold from the truck immediately after it was picked up.

The claimant denies all knowledge of the TV set, however, it is impossible for a TV set not to have been put on the truck without the claimant's knowledge. An investigation made by the employer's detective agency showed that the claimant was involved in the actual selling of the TV set. It should be noted that the claimant and his helper were both discharged by this employer.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994) provides that an individual shall be disqualified from receiving benefits where he or she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards that an employer has a right to expect and shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

EVALUATION OF EVIDENCE

Section 8-1002 of the Labor and Employment Article, Annotated Code of Maryland, states that gross misconduct is conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interest of the employing unit. In this case, the claimant knew that anything that was picked up from the various homes along his route was to be taken back to his employer's premises. Yet, he did pick up a TV set which he later sold to someone on the street. The claimant knew that this was a direct violation of his employer's rules and regulations and it was a willful and deliberate disregard of standards of behavior. The claimant's conduct does not actually rise to the level of aggravated misconduct as it was not such a severe property loss as the property loss was rather minor and there is some question about whether or not he intentionally sold the set or whether it was a spur of the moment type of thing. The claimant has committed gross misconduct in this matter.

DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994). A disqualification is imposed for the week beginning December 3, 1995, and extending until the claimant becomes re-employed and has earned wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the claims examiner is reversed.



T. J. Lee, ESQ
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by April 11, 1996.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: March 15, 1996

RC/Specialist ID: 07215

Seq. No.: 002

Copies mailed on March 27, 1996 to:

RENARD EDWARDS
THRIFT STRS WASH DC INC
LOCAL OFFICE #07