



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 164-BH-83

DATE: February 9, 1983

APPEAL NO: 07132

S. S. NO:

CLAIMANT: Richard Hartman, Sr.

EMPLOYER: Polystyrene Products Company, Inc.

LO NO: 40

APPELLANT: EMPLOYER

ISSUE

Whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §6(b) of the Law; and whether the Claimant was discharged for misconduct connected with the work within the meaning of §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 SUPERIOR 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, 1983

- APPEARANCES -

FOR THE CLAIMANT:

Richard Hartman, Sr. - Present
Mike Myers - Witness

FOR THE EMPLOYER:

John Gerard-
Vice president
Donald Gerard-
President
Edward Manns-
Cutter

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 in this case, as well as the Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed by Polystyrene Products Company as a maintenance worker for approximately one year until April 12, 1982, when he was discharged for improperly punching the time card of a co-worker.

On Friday, April 9, 1982, the Claimant left the premises with a co-worker, Mike Myers at approximately 12:00 p.m. and drove Myers home. Myers did not return to work that day. The Claimant returned to work shortly thereafter and punched out at 2:45 p.m. He punched out Myers' card at 2:46 p.m.

On Monday, April 12, 1982., the Employer confronted the Claimant and Myers with the discrepancy on Myers' time card. The Claimant admitted punching the time card but indicated that he must have made a mistake. He was subsequently terminated.

It is not a violation of Company's policy to punch the card of a co-worker, provided of course, it is done correctly.

CONCLUSIONS OF LAW

The evidence supports a conclusion that the Claimant punched out the time card of his co-worker, almost 3 hours after the co-worker had actually left work. It is undisputed that Myers' card was punched out at 2:46 p.m. and that he in fact left about 12:00 p.m. There is direct testimony that the Claimant punched out 2 cards at the time he left. His card was punched out at 2:45 p.m.; the card of his co-worker at 2:46 p.m. In addition, he admitted to the Employer on April 12, 1982 that he had punched the card.

However, the Board finds insufficient evidence that the Claimant's action was more than a mistake. In a case of alleged gross misconduct the burden is on the Employer to show that the Claimant's actions were a deliberate and willful disregard of standards of behavior, which his employer has the right to expect showing a gross indifference to the Employer interest. (Since this case involved one alleged act of gross misconduct, the second alternative standard of gross misconduct is not applicable.)

The Board concludes that the Employer has failed to meet its burden.

DECISION

The Claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of §6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with Polystyrene Products Company, Inc. The Claimant may contact his local office concerning the other eligibility requirements of the Law.

The decision of the Appeals Referee is affirmed.


Associate Member


Associate Member

W:D
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DATE OF HEARING: November 30, 1982

MZ

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT