



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

Decision No.:	192 -BH-91
Date:	Feb. 14, 1991
Claimant: Beth M. Gilbert	Appeal No.: 9010799
	S. S. No.:
Employer: Polo Grill	L. O. No.: 45
	Appellant: EMPLOYER
Issue:	Whether the claimant was discharged for misconduct, connected with her work, within the meaning of Section 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 CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

March 16, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant not present

Gail Kaplan, President

EVALUATION OF THE EVIDENCE

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 Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a waitress with the Polo Grill from approximately May 29, 1990 until her discharge on or about July 1, 1990. She worked for the employer part time and also attended school.

On or about the evening of June 25, 1990, the claimant was waiting on a table of four people. One of the owners of the Grill, Gail Kaplan, was acquainted with the claimant's customers. Therefore, she approached the claimant and told her to provide the table with free after dinner drinks, courtesy-of the house. The proper procedure in such a situation is for the drinks to be rung up on the tab and then indicate that the customers were not charged.

The claimant apparently misunderstood and thought that if the customers did not order after dinner drinks, that the owner wanted her to not charge them for their before dinner cocktails. Therefore, she did not charge them for the cocktails, nor did she ring up the cocktails on their check.

When the other owner of the Grill, Mrs. Kaplan's husband, discovered that the customers' drinks were not rung up, he became angry with the claimant and fired her. However, the claimant was allowed to work for two more days after the incident before she was discharged.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged from her job for reasons that do not amount to misconduct under Section 6(c) of the law. The Board has held that an instantaneous lapse in the performance of one's job duties does not constitute misconduct, Darnell v. St. Mary's Nursing Home, 549-BH-83. Similarly, in Hall v. Maryland Messenger Service, 410-BH-86, the Board found that a single incident of slight negligence does not amount to misconduct.

The rulings in these cases are applicable in this case. Although the claimant should have rung up the drinks on the customers' tab, this one slight lapse in her performance is not sufficient for a finding of misconduct connected with her work, within the meaning of Section 6(c) of the law. Therefore, the decision of the Hearing Examiner is affirmed.

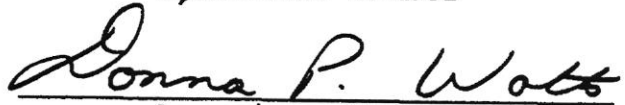
DECISION

The claimant was discharged, but not for misconduct, connected with her work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her disqualification from employment with the Polo Grill.

The decision of the Hearing Examiner is affirmed.



Associate Member



Associate Member

HW:W

kbm

Date of Hearing: December 4, 1990

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street
Baltimore, Maryland 21201*

Telephone: 333-5040

— DECISION —

Claimant:	Beth M. Gilbert	Date:	Mailed: September 10, 1990
		Appeal No.:	9010799
		S. S. No.:	
Employer:	Polo Grill	L.O. No.:	45
		Appellant:	Claimant

Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

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

September 25, 1990

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Beth M. Gilbert - Claimant

Not Represented

FINDINGS OF FACT

The claimant was employed by the Polo Grill on May 29, 1990. At the time of her separation from employment on July 1, 1990, she earned \$2.09 an hour plus tips as a waitress.

Several days before the claimant's separation from employment, she was told by the owner's wife to give two customers, who were friends of the owner, after dinner drinks "on the house." The couple had not ordered after dinner drinks but had ordered cocktails before dinner. The claimant did not charge the couple for cocktails since the employer had told her not to charge them for after dinner drinks. The claimant could not find either the owner or his wife for instruction as to whether or not to charge them for cocktails. Later that evening, the employer asked the claimant why she had not rung up the cocktails on the customer's ticket. The claimant explained that his wife had told her not to charge them for after dinner drinks and since they did not have after dinner drinks she did not charge them for cocktails which were cheaper. The employer appeared to be upset but said nothing further about it.

The claimant reported to work two days after the incident. On her last day of work, the employer asked her why she was there and told her that she had been fired because she "stole from his business by giving customers cocktails." The claimant tried to explain again why she did not charge the customers for the cocktails but the employer said that he did not tolerate mistakes and that she was "fired."

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual is disqualified for benefits when his/her unemployment is due to leaving work voluntarily. This section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "As we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."

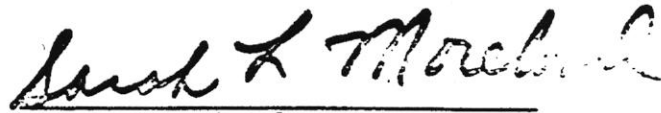
The claimant did not intend to quit her employment with the Polo Grill. Rather she was discharged by the employer, within the meaning of Section 6(b) of the Law.

Article 95A, Section 6(c) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

DECISION

The claimant did not voluntarily quit, within the meaning of Section 6(a) of the Law. Rather, she was discharged from employment for a non-disqualifying reason.

The determination of the Claims Examiner is reversed.



Sarah Moreland
Sarah Moreland
Hearing Examiner

Date of Hearing: August 30, 1990

bch/Specialist ID: 45536

Cassette No: 6459

Copies mailed on September 10, 1990 to:

Claimant

Employer

Unemployment Insurance - Northwest (MABS)