DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

—DECISION—

DECISION NO.: 2073-BR-83

DATE: November 17, 1983

CLAIMANT: Vernon C. Hill , Jr.

APPEAL NO.: 08668

S.S. NO.:

EMPLOYER: Baltimore Box Company
c/o ADP
Lane

LO. NO.: 1

APPELLANT: EMPLOYER

ISSUE: Whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §6(b) 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT 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 December 17, 1983

—APPEARANCE—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee.

Two co-workers of the Claimant were involved in an altercation on the Employer's premises. One drew a rifle on the other. The Claimant interjected himself in the matter, and drew his handgun on the armed co-worker in defense of the unarmed co- worker. The Employer terminated the Claimant and his co-workers. The Claimant was terminated for violation of the Employer's rule against possession of a firearm or other weapon on company property.

Before the Appeals Referee, the Claimant defended his actions on the ground that he was not aware of the Employer's rule prohibiting firearms. We find no merit in this contention. Possession of a firearm is against the law, ignorance of which is no defense. If the Claimant had an affirmative defense, such as, a license to carry the gun, the burden was on him to establish that defense. There is no evidence in the record of such a defense.

The fact that the Claimant defended another with the gun is immaterial. It was the possession of the gun, and not how it was used which violated the law, and the Employer's rule. The Claimant had sufficent intent to violate the law on the Employer's premises regardless of his motive for displaying the gun when he did. We note that the Claimant was in possession of the gun before it was displayed.

Moreover, there is insufficient evidence to support the Claimant's contention that the gun was inoperable, especially since the gun was used as if it worked.

The Employer had a right to expect that its employees would not report to work armed with guns. The conduct of the Claimant was a deliberate and willful disregard of standards of behavior which the Employer had a right to expect and showed a gross indifference to the Employer's interest. This is gross misconduct within the meaning of §6(b) of the Law.

DECISION

The Claimant was discharged for gross misconduct connected with his work within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 15, 1983 and until he becomes re-employed, earns at least ten times his weekly benefit amount of ($1,530.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

Maurice E. Dill
Associate Member

Thomas W. Keech
Chariman

D:K
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
HARRY HUGHES
Governor

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
1100 NORTH EUTAW STREET

-DECISION-

DATE: Sept. 2, 1983

LAIMANT: Vernon C. Hill, Jr.

APPEAL NO.: 08668

S. S. NO.:

MPLOYER: Baltimore Box Company
c/o Automatic Data Processing

L. O. NO.: 1

APPELLANT: C l a i m a n t

SUE: Whether the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

NY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT ECURITY OFFICE, OR WITH THE APPEALS DIVISION, **ROOM 515,** 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN ERSON OR BY MAIL.

HE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON September 18, 1983

-APPEARANCES-

OR THE CLAIMANT:

Vernon C. Hill, Jr. - Claimant
Jerome Jordan - Witness

FOR THE EMPLOYER:

Oliver Vandenberg - Personnel Manager and Francis Womack - Automatic Data Processing

FINDINGS OF FACT

The claimant began employment on July 17, 1973 and worked as a corrugator on the take off machine at a salary of $7.83 per hour. The claimant was terminated on May 20, 1983.

The claimant's ultimate dismissal in this case arose out of an altercation between two employees that occurred sometime around May 20, 1983 at the close of the second shift. Apparently, some disagreement occurred between two employees while moving a corrugator from one point to another. One of the employees dropped one end of the corrugator injuring the finger of the other employee. As a result of this incident, an altercation and verbal exchange ensued where some pushing and shoving occurred between the two employees. Not satisfied with the course of events that occurred as a result of the above mentioned altercation, the non-injured employee at the close of the shift, went to his car and removed from the car a sawed off semi-automatic 22 rifle. The non-injured employee then remained in the parking lot of the employer's plant awaiting the injured employee.

At the close of the 11 P. M. shift, the claimant and the injured employee involved in the altercation mentioned early on, left the job area and proceeded to the parking lot. While walking to their respective vehicles, the non-injured employee was observed brandishing the semi-automatic rifle towards the claimant and the already injured employee accompanying him. At that time, the non-injured employee threatened the injured employee with immediate bodily harm while the claimant stood watching. According to the claimant, a fight then ensued between both of the employees once again with the injured employee attempting to run away. Somewhere during the altercation, two shots were fired. The claimant at this time attempted to try to stop the fight. It is the claimant's testimony that he reached into a shoulder bag that he was carrying at the time, in order to get a cigarette. Facing imminent bodily harm by the non-injured employee, pointing the automatic rifle in his face, the claimant then pulled out his own 25 automatic weapon.

At this time, the claimant and the non-injured employee, brandishing his sawed off semi-automatic rifle, were standing face to face - guns drawn. Somehow, while this situation was in posture of coolness, both the claimant and the employee with the shotgun negotiated an agreement whereby both agreed not to pursue the altercation any further. The guns were then withdrawn, and the injured employee was taken to the hospital.

It was the claimant' s testimony that certain management employees were in the parking lot during the altercation. There was also no clear evidence presented that none of the management employees called the police as they were duly bound to do under the present circumstances. He also pointed out that the 25 automatic was not in proper working order, and could not be fired. However, he did specify that he kept the gun for his own defense.

It is claimant's testimony that he was not aware of a rule regarding the carrying of firearms on the employer's premises. However, he did admit to having the gun on company property. The employer stated that there was a written company policy regarding the carrying of firearms on company property, (Employer's Exhibit No. 1) and the testimony by the claimant that he was not aware of the rule was probably right. As a result of the aforementioned facts, the claimant was terminated from his employment for gross misconduct.

CONCLUSIONS OF LAW

It is concluded from the evidence presented at the appeals hearing that the claimant's behavior does not demonstrate a willful disregard of standards which the employer has a right to expect as to constitute gross misconduct within the meaning of Section 6(b) of the Law.

In the instant case, gross misconduct is not shown because there is no evidence that the claimant breached the rule of the employer by carrying firearms onto the employer's property. It was the employer's own testimony that the claimant probably did not breach the company rule because there was a distinct possibility he had no knowledge that the rule was even in existence. Gross misconduct is also not shown by the claimant because the claimant went to the defense of the employee who obviously had been injured as a result of the prior accident within the plant and the altercation which later ensued outside in the parking lot.

It can also be concluded that but for the immediate threat by the non-injured employee with the sawed off semi-automatic 22 rifle, the inference to be drawn is that the claimant would not have drawn his 25 automatic weapon with knowledge of its apparent firing deficiency. Under these circumstances, it would be appropriate for the claimant to invoke the doctrine of self defense. Also, under common law doctrines, the claimant would have the right to repel the deadly force directed at him with deadly-force, and under Maryland's version of the Good Samaritan Statute one has the right to come to the defense another whene one ascertains that the person faces immediate physical harm.

DECISION

It is held that the claimant was discharged for misconduct in connection with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 15, 1983 and for the five weeks immediately following.

The determination of the Claims Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.

W. E. Walker
Appeals Referee

Date of hearing:8/23/83
amp/8456
(Lyde)
5974
Copies mailed to:

Claimant
Employer
Unemployment insurance - Baltimore

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