

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

Decision No.: 21-BR-89
Date: Jan. 9, 1989
Appeal No.: 8809776
S. S. No.:

Claimant: Elizabeth A. Coward

Employer: Federal Express Management
ATTN: Daniel Cohan, Sr., VP

L. O. No.: 1
Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the law and whether the claimant is able to work, available for work and actively seeking work within the meaning of Section 4(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 AT MIDNIGHT ON February 8, 1989

— 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 but disagrees with the reasoning of the Hearing Examiner.

The employer, a food stamp disbursing agent, suspended the claimant for a number of reasons, one of which was the fact that she was arrested for using the employer's premises to commit food stamp fraud. The employer, however, presented no evidence of this, other than a typewritten statement, which was not even signed, detailing the investigation into this allegedly longstanding and deliberate, criminally fraudulent scheme. The Hearing Examiner at the hearing did not ask the claimant if she did this. Unsigned typewritten statements are certainly insufficient to prove a case of gross misconduct, and the fact that a person is arrested cannot be used as evidence that a person is guilty.

The employer suspended the claimant also for other reasons, only one of which he chose to present at the hearing and was fully cross examined about. This one reason was that the claimant, the manager of the employer's location, failed to deliver a paycheck to a subordinate employee and instead converted it to her own use. The Board finds as a fact that this occurred, and that the claimant had no reasonable excuse for doing this. This is a deliberate violation of standards the employer has a right to expect, showing a gross indifference to the employer's interests. This is gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

The penalty imposed by the Hearing Examiner under Section 4(c) of the law will be reversed. Insufficient information was obtained considering whether the claimant was eligible for sick claims under that section of the law. For this reason, this part of the decision will be reversed, but this does not preclude the local office from reinstating the penalty, if appropriate.

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This doctrine is called, in our law, the "presumption of innocence. "

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This case is complicated by the Hearing Examiner's statement on the record that he is "not going to consider that. This is the only thing I'm going to consider." It is impossible to determine from the record, of course, what the Hearing Examiner was referring to. Nevertheless; the employer testified fully, and was fully cross-examined about this incident.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning July 17, 1988 and until she becomes reemployed, earns at least ten times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

No penalty is imposed under Section 4(c) of the law. The local office of the agency may explore this issue and impose any penalty appropriate under this section, if it desires.

The decision of the Hearing Examiner is affirmed in part and reversed in part.


Chairman

Associate Member

K:H

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5048

STATE OF MARYLAND
William Donald Scheater
Governor

-DECISION-

Date: Mailed 10/20/88
Claimant: Elizabeth A. Coward Appeal No.: 8809776
S.S. No.:
Employer: Federal Express Management LO. No.: 01
Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 818, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201 EITHER IN PERSON OR BY MAIL, November 4, 1988
THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT 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:

Claimant Present

FOR THE EMPLOYER:

Daniel Cohan, Senior
Vice President

FINDINGS OF FACT

The claimant began working for the employer, the operator of a check cashing, money order and food stamp service; as a full-time Manager in June 1983. Her last day of work was July 21, 1988, when she was suspended by the employer after she had been arrested under a warrant issued out of the U.S. District Court for food stamp fraud. The warrants and affidavits of Federal government personnel identify the stamps involved in the fraud were in the possession of the employer.

As of the date of this hearing, the claimant has not been indicted nor convicted.

The claimant is now pregnant and is expecting in the near future and has been certified by her physician as not being able to work past August 30, 1988.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was separated for a non-disqualifying reason within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, is not supported by the testimony and evidence before the Hearing Examiner. Based on the weight of the testimony and the evidence, it is concluded that the claimant was discharged for gross misconduct connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Section 6(b) of the Law provides that gross misconduct shows conduct of an employee which is a deliberate and willful disregard of standards of behavior, which the employer has a right to expect showing a gross indifference to the employer's interest. In the instant appeal, the claimant's conduct clearly falls within this definition.

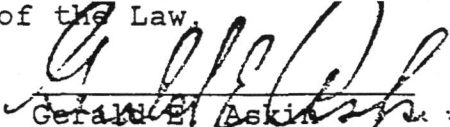
Section 4(c) of the Maryland Unemployment Insurance Law requires that a claimant be able to work and available for work and actively seeking work. In the instant appeal, based on information provided by the claimant, the claimant shall be disqualified for the week beginning August 28, 1988, and thereafter until she is released by her physician to return to employment .

DECISION

The claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied the week beginning July 17, 1988, and until the claimant becomes reemployed and earns at least ten times her weekly benefit amount at new employment and thereafter becomes unemployed through no fault of her own.

The determination to the Claims Examiner is reversed.

The claimant is not able and available for and actively seeking work, within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning August 28, 1988, and thereafter until the claimant is meeting all other eligibility requirements of the Law.


Gerard E. Askin
Hearing Examiner

Date of hearing: 9/23/88
RM/Specialist ID: 01037
5549
Copies mailed 10/20/88 to:

Claimant
Employer
Unemployment insurance - Baltimore (MABS)