

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.: 223-BH-89
March 30, 1989

Claimant: Keith Savage

Appeal No.: 8802241

S. S. No.:

Employer: The Johns Hopkins Health
System Corporation
ATTN: Carolyn Polowy, Esq.

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.

—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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

April 29, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Carol Adams - Student Atty.
David Medine - Supervising Atty.
Beth Bollinger - Student Atty.

FOR THE EMPLOYER:

Carolyn Polowy - Sr.
Attorney
Elizabeth Hemeter -
Counsel

Lori Ocvirck, Esther
Treciak & Anne Marie
Salander - Witnesses

EVALUATION OF 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 clerical group leader, earning \$7.55 per hour by the last day of his employment, July 23, 1987. He had been employed since May 30, 1978.

On his last day of work, the claimant began to take an excessively long amount of time to do his assignments, having difficulty putting the records in order. He was also late for work and arrived sweating, nervous and with dilated pupils. He avoided eye contact with other employees.

The employer sent the claimant for a drug and alcohol screening test. The claimant indicated that he was certain that the tests would come back positive. When the first set of tests came back negative, the claimant expressed astonishment. The claimant was a substance abuser at that time, having been addicted to the use of illegal drugs and also alcohol.

When the tests were redone by a more reliable scientific method, it was determined that there was presence of the active ingredient in marijuana and also cocaine metabolizes in the claimant's system. No alcohol was found. The claimant was discharged for being at work under the influence of drugs.

CONCLUSIONS OF LAW

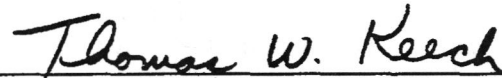
The Board had no difficulty in concluding that the claimant was, in fact, under the influence of drugs to the extent that it was effecting his job performance on the last day of work. He was at the time addicted to illegal drugs, he stated that he expected the tests to come back positive, he was nervous, sweating, avoiding eye contact and unable to complete his routine assignments. It is all of this evidence which led the Board to find as a fact that the claimant was under the influence of illegal drugs while at the work place.

The Board has always ruled that a claimant who appears for work under the influence of illegal drugs has committed gross misconduct, connected with the work, within the meaning of Section 6(b) of the law. See, e.g., Crosby v. Anderson Chevrolet (691-BR-84). This is because this is a deliberate violation of employment standards, showing a gross indifference to the employer's interests.

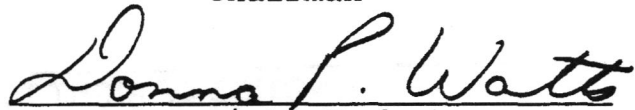
DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning the Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning August 2, 1987 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,600) and thereafter becomes unemployed through no fault of his own.

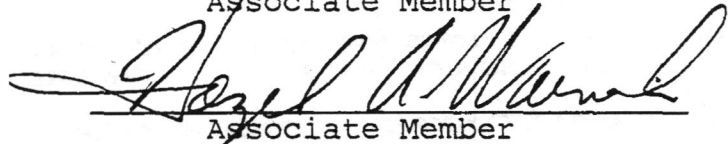
The decision of the Hearing Examiner is affirmed.



Chairman



Associate Member



Associate Member

K:W:W

kbm

Date of Hearing: November 15, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ms. Beth Bollinger
Clinical Law Office
University of Maryland Law School

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schafer
Governor

- DECISION -

Date: Mailed: 5 / 17 / 88

Claimant: Keith H. Savage

Appeal No.: 8802241

S.S. No.:

Employer: Johns Hopkins Hospital
c/o The Gibbens Company, Inc.

LO. No.: 1

Appellant: Claimant

Issue:

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

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 518, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

NOTICE. APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE ^{6/1/88} U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
Pamela M. Iodice, Student Attorney
Richard North, Supervising Attorney
University of Md. Clinical Law Program

Lorrie Ocvirk,
Medical Records Mgr.
Marty Young,
The Gibbens
Company, Inc.

FINDINGS OF FACT

The claimant was employed from May 30, 1978 as a clerical group leader at a pay rate of \$7.65 per hour for full-time employment. He was discharged on July 23, 1987 for reporting for work under the influence of an intoxicant, hallucinogenic or narcotic, which was a major violation of the employer's work rules. The claimant reported for work at 8:00 a.m. and continued to work until 2:30 p.m. when a supervisor determined that he showed signs

of substance abuse (nervousness, sweating, glassy eyes) and after conference with others in management required the claimant to submit to drug testing. The claimant did so and was assured that if the test came up positive he would not necessarily be discharged, but he must then submit to treatment. The claimant upon taking both a blood and urine test was suspended pending the laboratory tests. The first test proved negative. The second test of the same samples proved positive for cocaine, marijuana and nicotine. The claimant was discharged at that point.

After separation from the employment the claimant voluntarily entered a detoxification program at a local hospital. He successfully completed that program and continues through the date of the hearing to remain drug and alcohol free, and is in every sense, a recovering alcoholic and narcoholic.

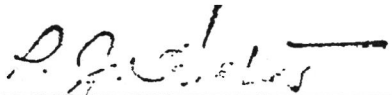
CONCLUSIONS OF LAW

It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, in that he reported for work in a condition unfit for work, due to substance abuse, which, proved to be narcotic and not alcohol. Mindful of the memorandum of law submitted on behalf of the claimant and the cases cited therein, it is held that the claimant's actions resulting in his discharge constitute gross misconduct connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

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 for the week beginning August 2, 1987 and until he becomes re-employed, earns ten times his weekly benefit amount (\$1,600) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is hereby affirmed.



P.J. Hackett
Hearing Examiner

Date of hearing: 4/15/88

rc

(2301-B & 2302-A&B) -Merryman
Copies mailed on 5/17/88 to:

Claimant

Employer

Unemployment Insurance - Baltimore - MABS

University of Maryland School of Law

Attn: Richard L. North