



DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

BOARD OF APPEALS

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

William Donald Schaefer, Governor
J. Randall Evans, Secretary

— DECISION —

	Decision No.:	235 -BR-88
	Date:	April 8, 1988
Claimant:	Appeal No.:	8713161
	S. S. No.:	
Employer:	L. O. No.:	1
St. Luke Lutheran Home, Inc. ATTN: Stanley Selenski, Admin.	Appellant:	EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

May 8, 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant was an employee in the housekeeping department of the employer's geriatric nursing facility from January 20, 1986 to October 7, 1987.

The claimant had previously been warned for having heated arguments with supervisory staff. On October 7, 1987, the employer planted a candy lollipop in one of the rooms being cleaned by the claimant. This was done in response to a series of thefts and after a seminar held by the police department at which the seriousness of any theft of any items from patients' rooms was explained. The claimant was observed removing the lollipop and placing it in her pocket. Thereafter, she was summoned to the office in order to receive a warning and a two-day suspension as a result of that incident.

The claimant was off work for a few days. When she returned on October 12, 1987, the employer attempted to serve her with the warning and suspension notice. The claimant then became abusive and loud. She used foul language, attempted to snatch some papers out of her supervisor's hand, left the office without permission and continued loud abusive remarks toward her supervisor at a volume level high enough to disturb those who were in other offices far down the hall.

In the case Young v. North Charles General Hospital (626-BR-84), the Board ruled on a case where the claimant twice refused to listen to his supervisor in a counseling meeting, screamed at his supervisor, walked out of the meeting and continued to scream in the hallway in front of staff and patients. The Board held in that case that the claimant's action 'was a deliberate violation of standards of employment his employer had a right to expect, showing a gross indifference to his employer's interest. The Board held that this was gross misconduct within the meaning of Section 6(b) of the law.

This case is very similar to the Young case. For the same reasons, the Board concludes that the claimant's conduct was gross misconduct within the meaning of Section 6(b) of the 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. She is disqualified from receiving benefits from the week beginning October 4, 1987 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1,140.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

The decision of the Claims Examiner is reinstated.


Chairman


Associate Member

K:DW

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Date: Mailed February 2, 1988
Appeal No: 8713161
S.S. No.:
Claimant: S .G. Barnes
Employer: St. Luke Lutheran Home, Inc. L.O.No.: 01
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 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 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON February 17, 1988
NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK

-- APPEARANCES --

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Stanley Selenski,
Administrator;
Jean Ma&wood,
Claimant's Immediate
Supervisor

FINDINGS OF FACT

The last day for the Claimant to file her appeal was December 1, 1987. The appeal was filed on December 14, 1987. The Claimant originally filed her appeal by letter on December 1, 1987. She filed again on December 14, 1987 when she was informed by Miss Blue, a

Claims Examiner, that the letter had not been received.

Section 6(b) and 6(c):

The employer operates a geriatric nursing facility. From January 20, 1986 to October 7, 1987 the Claimant was one of 4 employees in the housekeeping section.

Due to thefts from patients the employer held a seminar and had the Baltimore Police Department talk to the employees about the seriousness of theft. Pursuant to this Miss Maywood the Claimant's immediate supervisor placed a lollipop in a patient's room and watched from a distance to see who would take it. She observed the Claimant pick it up and put it in her left top uniform pocket. Miss Maywood decided to suspend her for 3 days.

When she attempted to talk to the Claimant about the incident, the Claimant became boisterous, argumentative and attempted to snatch her time cards out of Miss Maywood's hands. Consequently, she was discharged.

CONCLUSIONS OF LAW

Section 7(c)(3):

Under this section of the Law a determination or a redetermination made by the secretary on the claim pursuant to paragraph 1 of this subsection it shall be deemed final as to the Claimant and to an employer entitled to notice of the determination or redetermination unless the Claimant and employer entitled to notice thereof files an appeal within 15 days after the notice was mailed to his last known address or otherwise delivered to him; provided, that such a period may be extended by the Board of Appeals for good cause. A Hearing Examiner also has jurisdiction to determine whether there is good cause for filing a late appeal. In this case I find good cause. The Claimant made a good faith effort to file her appeal on December 1, 1987 only to discover approximately 14 days later that either it had not been received by the agency or it had been misplaced.

Section 6(b) and 6(c):

The term misconduct is used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a derelict of duty, a course of wrongful conduct committed by an employee within the scope of his employment relationship, during the hours of employment, or on the employer's premises. Rogers v Radio Shack, 271-MD-126, 314 Atlantic 2nd 113-1974.

The Claims Examiner determined that there was gross misconduct. TO find gross misconduct under Section 6(b) there must be evidence of "(1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, snowing a gross

indifference to the employer's interest, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations. Misconduct not falling within this definition shall not be considered gross misconduct ."

The conduct of the Claimant in this case falls within the meaning of Section 6(c) rather than Section 6(b) of the Law. Although there were two other minor disciplinary problems, the Claimant was discharged for becoming loud and boisterous after being accused of taking a lollipop.

DECISION

The determination of the Claims Examiner is reversed.

The Claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits for the week beginning October 4, 1987 and the four weeks immediately thereafter.

The denial of benefit for the week beginning October 4, 1987 and until the Claimant becomes reemployed and earns at least ten times her weekly benefit amount of (\$1,140.00) is rescinded.

The Claimant had good cause for filing a late appeal.


Van D. Caldwell
Hearing Examiner

Date of Hearing: January 12, 1988

Cassette: 131

Specialist ID: 01055

Copies Mailed on February 2, 1988 to:

Claimant

Employer

Unemployment Insurance - Baltimore (MABS)