DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS
THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 241-BH-87

Date: April 2, 1987

Claimant: Kareemeh Boardman

Appeal No.: 8611126

S. S. No.:

Employer: Creative Hairdressers, Inc.

L.O. No.: 5

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct, connected with her 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 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 2, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Kareemeh Boardman

FOR THE EMPLOYER:

Lisa Logue, Mgr.
Karen Mershon,
District Manager

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 Employment and Training's documents in the appeal file.

The Board has not found to be credible the claimant's testimony in this case. One of the most important issues in this case is whether the claimant overcharged a customer of the employer, against the employer's regulations, or whether the claimant simply applied applicable charges to the customer for extra services which were given the customer. The basic charge that the employer claimed the claimant should have charged the customer was $27.50. The claimant admitted that she had charged the customer $45.00. In her testimony before the Board, the claimant gave two different versions of what services she gave this other customer in order to arrive at the $45.00 figure. Neither of these versions resulted in a price of $45.00. They both actually would have resulted in prices of $42.50. They also contradict each other with respect to which services were given. For these reasons, the Board did not credit the claimant's testimony on this issue. The claimant's testimony with regard to a previous incident was also vague and self-contradictory to the extent that the Board has concluded that her testimony as a whole lacks any credibility.

FINDINGS OF FACT

The claimant worked as a hair stylist at Creative Hairdressers, Inc. from December 6, 1983 until August 28, 1986.

The claimant was discharged because she charged a customer $45.00 for services which were supposed to cost no more than $27.50. This was the standard charge for giving a permanent, which was the service involved in this case. The employer did have a policy where an additional charge of from between $1.00 to $5.00 could be made for hair which was especially difficult. Although the claimant charged the customer $45.00, she only reported $40.00 to the employer.

The claimant's actions were clearly against the employer's policies, of which she was aware. The extra charge was not accounted for by any extra services performed for the customer by this claimant.

The claimant had been warned in the past for being rude to a customer and for failing to perform a shampoo on another customer, although the customer had paid for it. In each of these instances, the claimant had done the act alleged.

CONCLUSIONS OF LAW

The claimant's deliberate overcharging of a customer was clearly a deliberate violation of employment standards, showing a gross indifference to the employer's interest. This is gross misconduct, within the meaning of Section 6(b) of the law. The claimant's failure to turn in all the money charged to the customer to the employer was also gross misconduct. Considering the claimant's previous infractions, her conduct as a whole also constitutes a series of repeated violations, showing a wanton disregard for her obligations. Thus, the claimant's conduct meets both definitions of gross misconduct under Secton 6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning August 24, 1986 and until she becomes reemployed, earns at least ten times her weekly benefit amount ($1,950) 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.

Thomas W. Keech
Chairman

Associate Member

K:W
kbm
Date of Hearing: March 17, 1987

COPIES MAILED TO:
CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - FREDERICK

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

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
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed December 31, 1986

Claimant: Kareemeh H. Boardman

Appeal No.: 8611126

S. S. No.:

Employer: Creative Hairdresser

L.O. No.: 5

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 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 OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON January 16, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Patti Park Kurtz,
Human Relations
Director

FINDINGS OF FACT

The Claimant worked as a hair stylist in the Frederick, Maryland Hair Cuttery. She worked their from December 6, 1982 until August 28, 1986. On August 16, 1986, the Claimant had a customer who wanted a permanent. This customer had oriental hair, and it was thinned out. The

Claimant gave the customer an estimate of $45 to do the hair styling. The customer accepted the estimate and had the work done and paid the price. The Claimant then entered $40 as the total charge on the personal computer cash register of the employer. She states that it was an accident that she did not ring up $45. She was not aware of her mistake. The next day, the customer came in and complained about the $45 charge because she looked at the charge board listed at the place of employment and recognized that the total charges should have been $40. The Claimant then gave her a $5 bill out of her money to "make the customer happy." The employer's position is that the Claimant gave the customer the $5 refund because the Claimant knew she had overcharged the customer. The Claimant disagrees. Later, the Claimant was fired from employment for two reasons: 1. because she failed to ring up the correct amount that she charged the customer in the amount of $45 on the personal computer, and 2. that she overcharged the customer by $5.

CONCLUSIONS OF LAW

The evidence reveals that the Claimant, in fact, made a mistake in failing to ring up the full charge on the personal computer of the employer. There is no evidence to show misappropriation of company funds. A mistake is not to be equated with deliberate and willful gross misconduct. The evidence in this case reveals that there was simply a mistake by the Claimant when she rang up the sale on the personal computer in the amount that she recorded and that the Claimant did calculate the initial charge of $45, which was an additional $5.00. Therefore, the Claimant's conduct is a result of two mistakes that she made and is not gross misconduct, and she cannot be disqualified under Section 6(b) of the Law.

DECISION

The Claimant was discharged from employment, but not for gross misconduct connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. There is no denial of benefits.

The determination of the Claims Examiner is hereby reversed.

J. Martin Whitman
Hearing Examiner

Date of hearing: 12/5/86
Cassette: 7561 (McElroy)
Copies mailed on December 31, 1986 to:
Claimant
Employer
Unemployment Insurance - Frederick