

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

Decision No.:	259 -BH-91
Date:	March 11, 1991
Claimant: Kevin Younger	Appeal No.: 9009807
	S. S. No.:
Employer: Washington Suburban Sanitary Commission c/o Unemployment Tax Service	L. O. No.: 7
	Appellant: EMPLOYER

Issue:

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

April 10, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Charles Calero,
Section Head;
Allan Lee, Assistant
Unit Supervisor;
Michael Galligan,
Asst. Section Head;
James Stuller, UTS

EVALUATION OF THE 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.

The claimant was properly notified of the time and place of the Board's further hearing in this case, but he did not appear. At the hearing, the employer presented testimony which tended to discredit the claimant's excuses for his employment lapses on the day in question. The Board notes that the claimant's excuses were highly questionable anyway; they verged on the incredible by themselves. The employer's additional testimony rebutted completely the claimant's excuses. The testimony established not only that the claimant entered onto the computer false information that he had visited numerous homes, but that he also stated falsely to his employer that he had visited these homes -- then admitted that he had not done so. The employer has established beyond any doubt that the claimant's excuses for failing to perform his job, as testified to at the previous hearing, were completely without merit.

FINDINGS OF FACT

The claimant was employed as a meter reader for the Washington Suburban Sanitary Commission from April of 1988 through May of 1990. He earned \$16,672 per year.

The claimant had a poor work history. He had been warned about excessive unscheduled absences, about failing to complete his route, and about failing to properly record his contacts with the households he was supposed to be visiting. These reprimands were justified. The claimant had also been specifically warned not to make up "not at home" cards in advance of actually determining whether anyone was home.

The claimant was discharged for making false entries on his computer. These entries indicated that he had visited a number of houses on Delano Street and Foley Street and had found that no one was home. These entries were false. He had not even visited these houses. The false entries were made deliberately by the claimant, apparently in an attempt to avoid work.

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed: September 14, 1990
Appeal No.: 9009807
S.S. No.:
L.O. No.: 07
Claimant ,

Claimant: Kevin J. Younger
Employer: Washington Suburban Sanitary
c/o Unemployment Tax Service

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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE MARYLAND 21201. EITHER IN PERSON OR BY MAIL.

October 1, 1990

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Kevin J. Younger - Claimant

FOR THE EMPLOYER:

Charles Calero,
Meter Semite
Section Head
Sharon Ayers,
Unemployment Tax
Service

CONCLUSIONS OF LAW

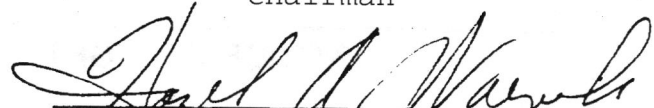
The claimant's main function at the employment was to read the meters at the households to which he was assigned. His falsification of his contact report was a deliberate violation of standards the employer had a right to expect, showing a gross indifference to the employer's interests. This is gross misconduct within the meaning of Section 6(b) of the law. This conduct would be gross misconduct in itself, even if the claimant had not been previously warned about various aspects of his work performance. The claimant's previous substandard work performance, and the resulting warnings, make it even more clear that this is a case of gross misconduct.

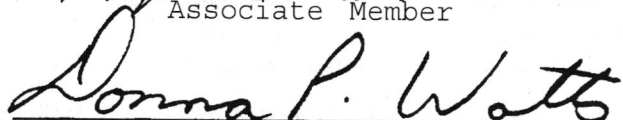
DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning April 29, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,620) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed. The original decision of the Claims Examiner is reinstated.


Chairman


Associate Member


Associate Member

K:W:W

kbm

Date of Hearing: January 15, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at College Park effective July 1, 1990.

The claimant was employed by Washington Suburban Sanitary Commission as a meter reader from April, 1989 to May 1, 1990 at a pay rate of \$16,672 per year.

The claimant was effectively terminated on April 27, 1990 based upon the employer's allegation that he had falsified documents.

The claimant had been assigned, to a route in Montgomery co. The claimant was confused as to which houses were on his route. The claimant read meters in houses not assigned to his route. The claimant had just been assigned to the Burnt Mills office. Aside from being warned about seven unscheduled absences prior to December 11, 1989, the claimant was reprimanded to failing to finish his assigned readings on January 26, 29, 1990 and February 1, 1990. The claimant had been reprimanded for improper entries attempting to locate inside meters but that the locations actually had outside meters that he could not find. The claimant was reprimanded for indicating on his reports "bad dog code" on properties where no dogs existed. Therefore, actual readings were not made. The claimant had been warned for falsification of entries that he could not locate meters that were visible and accessible and which where not covered over as he alleged.

Finally, the claimant was discharged, because he had certified that he had attempted to enter occupied homes for inside meter readings and had left "not home cards".

The supervisor went to about a dozen of these houses on the claimant's route, was able to secure entry by the occupant and he was told that no "not home cards" were left.

The claimant admitted that he did not visit these properties and that no cards were left, because he had not gotten to these properties due to being confused as to whether he had actually been assigned to read meters in these locations. In an effort to save time, the claimant had prepared a number of "not home cards" in the event that property owners were not home. But, he had never gotten to the properties in question. He informed the supervisor that he had not gotten to those properties, but the supervisor went to the unvisited properties and secured entry and then blamed the claimant for falsifying his documentation.

CONCLUSIONS OF LAW

The claimant has reasonably explained the circumstances surrounding his failure to enter certain residences to read meters, where his supervisor had been successful. The claimant had not visited these properties because the supervisor had appeared before he had a chance to visit them. Therefore, when the claimant admitted that he had not visited these properties, such was the truth. The claimant further explained that he had prepared not home cards in advance to save time when occupants were actually not at home.

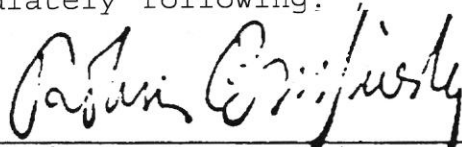
However, the other evidence presented by the employer shows that the claimant had in fact deviated from a standard of conduct which the employer had a reasonable right to expect with respect to unscheduled absences, prior failures of not reading outside meters, improper entry to read inside meters, when in fact the meters were outside, and some lateness.

Accordingly, based upon the evidence presented by the employer and the challenge offered by the claimant, I conclude that he was discharged for misconduct connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The evidence is insufficient to support a finding of gross misconduct connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, for lack of evidence of gross indifference to the employer's interest or a regular and wanton disregard of employment obligations. Accordingly, the determination of the Claims Examiner shall be modified.

DECISION

The claimant was discharged for misconduct connected, with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

Benefits are denied for the week beginning for the week beginning April 22, 1990 and the nine weeks mediately following.



Robin L. Brodinsky
Hearing Examiner

Date of Hearing: September 6, 1990
bch/Specialist ID: 07195
Cassette No: 6670
Copies mailed on September 14, 1990 to:

Claimant
Employer
Unemployment Insurance - College Park (MABS)