DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

— DECISION —

Decision No.: 264-BH-85

Date: April 30, 1985

Claimant: Melvin Keller, Jr.

Appeal No.: 08439

S. S. No:

Employer: Eastport International

L.O. No.: 7

Appellant: EMPLOYER

ATTN: Janet Gates, Pers. Mgr.

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON May 30, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Melvin Keller, Jr. - Claimant

FOR THE EMPLOYER:

Janet Gates - Personnel Mqr.

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 Department of Employment and Training's documents in the appeal file.

Although the employer was essentially given two opportunities to prove its case of misconduct against the claimant, it failed to do so. The employer's witness and the employer's documents were not contradictory to the claimant's testimony regarding his 1984 attendance record. During the first six months of 1984, the claimant missed three days. The employer could not prove that any of these days were unexcused and, in fact, admitted that one was a personal holiday and the other was sick leave to which the claimant was entitled. The employer could not state for a fact that the third day was unexcused. The employer submitted some evidence that the claimant, who was a machinist, turned in some unsatisfactorily machined parts and that these had to be scrapped. The employer's witness, however, had no idea of the actual error involved, nor any testimony as to whether the number of errors committed was unusual or not. The Board also is unable to tell either of these facts from the Documentary evidence submitted, which shows that certain parts of some piston plugs were made wrong. The employer does not allege that the claimant did this deliberately, so the only issue is whether the claimant was negligently machining these parts. Without any evidence as to the relative difficulty of machining these parts and the average number of mistakes ordinarily made and the average number of mistakes made by the claimant prior to the time he submitted these parts, it is impossible for the Board to conclude that the employer has proven any negligence on the claimant's part.

FINDINGS OF FACT

The claimant was employed from August of 1982 until June of 1984 for Eastport International. He was a machinist, The claimant had a bad attendance record in 1983, incurring 178 hours of leave without pay, in addition to some sick time, vacation time and 80 hours of military leave. The employer is unaware of how many of the 178.5 hours of leave without pay were excused and how many were unexcused. It is clear, however, that the employer considered that the claimant was missing too much time from work and verbally warned him at the end of 1983 that he must improve his attendance in order to retain his job. During 1984, the claimant's attendance improved dramatically. During the first six months of 1984, the claimant missed only three days: one day was a day of personal leave, one day was a sick day (of the 40 hours of sick leave allotted, the claimant used only these 8 hours in the beginning of 1984) and the third day was a day on which the claimant was excused from work due to his car breaking down.

The employer also fired the claimant because he made a number of machining mistakes on piston plugs which he was working on. The claimant was fired upon the word of his supervisor. The claimant did make a number of mistakes on these piston plugs, but whether this number of mistakes proves negligence on his part cannot be determined from the evidence in the record.

CONCLUSIONS OF LAW

In a misconduct case under §6(b) or §6(c) under the Maryland Unemployment Insurance Law, the burden is on the employer to show that the claimant committed misconduct. Negligence in performing the employer's work would be misconduct. In this case, however, the employer has not proven that the claimant's mistakes were the result of any type of negligence. The employer's evidence proves that mistakes were made, but no evidence was presented to show that this was even an unusual amount of mistakes and nothing was presented to rebut the claimant's testimony that the first of these parts were inspected by an inspector when the job began in April of 1984 and that he should have been told at that time if the parts were out of specification. The Board is not familar enough with the type of work in question to make its own judgment as to whether or not the number of errors committed showed negligence and, even it were, the Board is bound by the testimony produced in the record. This testimony clearly did not prove any negligence on the part of the claimant.

As regards to the attendance, the record clearly shows that the claimant's previously bad attendance record was dramatically improved after he was verbally warned at the end of 1983. The employer, in fact, could point to no instances of unexcused absence in the last six months of the claimant's employment.

In summation, the employer has simply not met its burden of proof that the claimant committed any type of misconduct.

DECISION

The claimant was discharged, but not for any misconduct within the meaning of §6(b) or §6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the reason for separation from Eastport International. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decisions of the Claims Examiner and the Appeals Referee are affirmed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

I agree with the result though not with much of the reasoning.

Maurice E. Dill
Associate Member

D

DATE OF HEARING: April 2, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: August 22, 1984

Claimant: Melvin Keller, Jr.

Appeal No.: 08439-EP

S. S. No.:

Employer: EastPort International

L.O. No.: 7

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 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 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 September 6, 1984 .

– APPEARANCES –

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Janet Gates, Personnel Manager

FINDINGS OF FACT

The claimant was employed by Eastport International for about two years until June 8, 1984. He performed the services of a Machinist, and was earning $8.00 an hour at the time of termination of the employment.

The claimant was discharged, because of absence which the employer considered to be excessive and for work performance with which the employer was dissatisfied. The claimant suffers

from hypertension for which he receives a Veteran's Administration Disability pension, and he has also had asthmatic attacks. The claimant lost a substantial amount of time from work for these reasons. But, the absence was beyond his control. In addition, the claimant lost five or six days because of an automobile accident in which he was involved in 1983. The claimant is in the military reserve, and was absent for 80 hours because of military duty.

On or about June 6, 1984, just before the claimant was discharged, his supervisor informed him that he had recommended a 10% raise for the claimant, and he felt that it would be approved. On or about June 8, 1984, the supervisor informed the claimant that he had made a substantial error in his work, and that the work that he had done was rejected by an inspector. The claimant felt that the work had been done correctly, and he requested permission to discuss the matter further with his supervisor, with a higher company official, and with the inspector, but his request was denied and he was discharged. Evidence at the hearing indicates that the claimant had done his work correctly and to the best of his ability.

CONCLUSIONS OF LAW

When an individual is discharged, the Law requires the allowance of benefits, unless the cause for discharge is misconduct. The burden of proof to show misconduct is upon the employer.

In this case, the claimant's attendance record was not satisfactory to the employer, but all of his absence was for compelling reasons beyond his control. The error charged by the employer against the claimant apparently precipitated the discharge. The claimant's denial of fault as to this matter was not refuted by any reliable evidence submitted by the employer. Under the circumstances, it is held that the record will not support a conclusion that the claimant was discharged for any concept of misconduct.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Sections 6 (b) or 6 (c) of the Law. No disqualification is imposed, based on his separation from employment with Eastport International. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.

Bernard Street
APPEALS REFEREE

Date of Hearing - 8/15/84
cd/2519
(6155/Arnett)

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Claimant
Employer
Unemployment Insurance - College Park