



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

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

STATE OF MARYLAND
HARRY HUGHES
Governor

-DECISION-

Decision No.: 294-BR-85

Date: May 14, 1985

Claimant Lisa Martz

Appeal No.: 13405

S. S. No:

Employer: Nikki , Inc .
ATTN: K. Darlene Park
Manager

L.O. No.: 3

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of §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 June 13, 1985

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the final decision of the Appeals Referee. The Board does not agree with all of the reasoning of the Appeals Referee. The claimant failed to work to the best of her ability, causing

her to fail to meet the employer's production standards. It is the failure to work to the best of her ability, not the failure to meet production standards, which is the misconduct. In the light of the employer's admission that the claimant suffered some medical problems towards the end of her employment, the Board will impose a lesser penalty under §6(c).

DECISION

The claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning October 28, 1984 and the four weeks immediately following.

The decision of the Appeals Referee is modified.


Chairman


Associate Member

K:W
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

**STATE OF MARYLAND
HARRY HUGHES
Governor**

(301)383-5040

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 -

Claimant: Lisa J. Martz

Date: mailed Jan. 16, 1985

Appeal No.: 13405

S. S. No.:

Employer: Nikki, Inc.

LO. No.: 3

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 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 Jan. 31, 1985

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Not Present

Represented by
K. Darlene Park,
Manager

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits effective October 28, 1984. The claimant had been employed by Nikki, Inc. from July 23, 1984 to October 31, 1984. The claimant was employed as a sewing machine operator. She earned \$3.35 per hour.

The claimant was terminated from employment at Nikki, Inc. because she failed to meet the production requirements. The claimant had been tested by the Department of Employment and Training for coordination and a dexterity test and was rated as high for the test. After six weeks of work, Nikki, Inc. evaluates the production of the employees; the employer requires the production hours of approximately sixty per cent. At the end of six weeks of work, the claimant's production averaged sixty-five percent. In September 1984 the claimant was transferred to the day shift. On October 4, 1984, the claimant was verbally warned that her production had fallen down to 50 percent. The claimant had been informed that she would need her production to be raised to the level of 76 percent to meet the company standard. The claimant had been observed by her employer on three days coming to work tired. Furthermore, the claimant had been absent from work on September 25, September 29 and October 9, 1984. On the claimant's last four weeks of work, her production was 51 and one-half percent, 61 percent, 58 percent, and 46 percent.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of her employment relationship, or on the employer's premises.

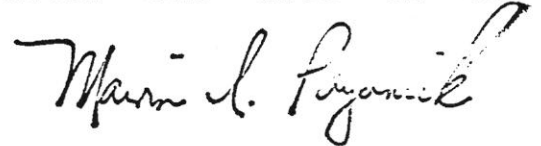
The claimant's conduct, by failing to meet the employer's production level constitutes misconduct in connection with the work under Section 6(c) of the Law. The claimant, after being employed for six weeks, averaged the production level of 65 percent. After the claimant was verbally warned that her production level must increase, the claimant's production level decreased. The claimant had been observed by her employer coming to work, being tired, and been absent from work on September 25, September 29, and October 9, 1984. The determination of the Claims Examiner that the claimant was separated for a non-disqualifying reason within the meaning of Section 6(c) of the Law, will be reversed.

DECISION

The claimant was discharged for misconduct in connection with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning October 28, 1984 and the nine weeks immediately following.

The determination of the Claims Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant had been employed after the date of the disqualification.



Marvin I. Pazornick
Appeals Referee

Date of hearing: Dec. 20, 1984

jlt

(9133 A-W. Dudley)

Copies mailed on Jan. 16, 1985 to:

Claimant

Employer

Unemployment Insurance - Cumberland