

Maryland

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

William Donald Schaefer, Governor

J. Randall Evans, Secretary

— DECISION —

Decision No.: 314-BH-88

Date: April 29, 1988

Claimant: Louise Jackson

Appeal No.: 8711521

S.S. No.:

Employer: Rosewood Center

L. O. No.: 45

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for misconduct, connected with her work, within the meaning of 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 29 , 1988

— APPEARANCES —

FOR THE CLAIMANT:

Louise Jackson, Claimant

FOR THE EMPLOYER:

Harold Adams, Asst.
Dir., Residential
Services;
Luray Miller, Asst.
Personnel Director;
Joyce Toomer, House-
keeper - Witness;
Mike Gallagher,
Chief, U.I. Unit

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 Economic and Employment Development's documents in the appeal file.

The Board notes that the claimant declined to testify in both the hearing before the Hearing Examiner (where she failed to appear completely) and in the hearing before the Board, even though she was given ample opportunity to do so.

The Board finds the impartial eyewitness testimony of Joyce Toomer, who testified on behalf of the employer, to be very credible.

FINDINGS OF FACT

The claimant was employed by Rosewood Center as a direct care aide, from approximately July 31, 1974 until she was suspended pending discharge on or about August 21, 1987. The employer is a long-term care facility for mentally retarded and disabled persons.

On or about August 8, 1987, the claimant engaged in beating a client with a tennis racquet, kicking the patient on the head and on the chest with her legs, and engaging in this conduct for approximately a half hour. This was observed by several witnesses, most notably a housekeeper, Joyce Toomer, who, while looking through a glass door, saw the claimant beat the client. She thought it was two clients fighting each other, and she reported this incident to a supervisor. When it was investigated, it was discovered that the claimant was assaulting a client of Rosewood. After the investigation, the claimant was suspended pending removal and pending the outcome of the criminal charges placed against her.

CONCLUSIONS OF LAW

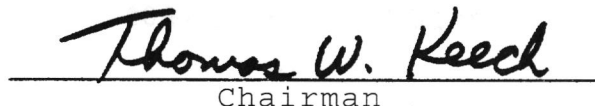
The Board concludes that the claimant was suspended pending discharge for gross misconduct, connected with her work, within the meaning of Section 6(b) of the law. The employer has clearly met its burden of proof in this case. Physical abuse of a client by an employee is without doubt a deliberate and willful disregard of standards of behavior which the employer had a right to expect, showing a gross indifference to the employer's interest. Therefore, the decision of the Hearing Examiner is reversed.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning August 21, 1987 and until she becomes reemployed, earns at least ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kbm

Date of Hearing: March 8, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

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 December 23, 1987
Claimant: Louise Jackson Appeal No: 8711521
S.S. No.:
Employer: Rosewood Center L.O. No.:
Appellant: Employer
Room 515
Issue: Whether the Claimant was discharged for misconduct connected with his 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

January 7, 1988

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Observers: Lou Ray Miller,
Personnel Officer
Harold Adams,
Assistant Director
Residential Services
Dorothy Ransom - *permanet*

FINDINGS OF FACT

The Claimant was employed by Rosewood Center from July 31, 1974 until August 21, 1987 as a direct care aide IV. The Claimant was assigned to second shift and earned \$14,300 per year.

The Claimant was placed on indefinite suspension pending the petition for removal for witnessed patient abuse. Criminal charges are pending and the Claimant's hearing or grievance has not been heard.

The employer presented no witnesses to either of the acts of patient abuse at the Appeals Hearing.

However, the employer did request a continuance until the criminal charges are heard. The undersigned Hearing Examiner indicated that a continuance would be taken under advisement and a decision rendered on that issue.

CONCLUSIONS OF LAW

The request for continuance until charges are heard will be denied. The employer had ample opportunity to bring any witnesses to the alleged patient abuse to the Hearing. Under the circumstances, unemployment insurance benefits cannot be held in abeyance while criminal charges are brought, because neither party nor the agency have any control over when the criminal case will be heard.

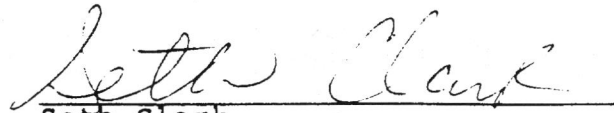
Section 6(b) of the Maryland Unemployment Insurance Law requires the denial of benefits until re-employment when it is held that an individual was discharged for gross misconduct connected with the work. The term "gross misconduct" is defined in the act as a deliberate and willful and disregard of the standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interests, or a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded her obligations. A lesser disqualification is imposed when an individual is discharged for misconduct connected with the work. The term "misconduct" means a substantial deviation from the proper standards of conduct. Both terms, gross misconduct and misconduct connote the element of deliberate or willful wrongdoing. Based upon the testimony presented at the Appeals Hearing, the employer has made allegations of misconduct only. No witnesses to the alleged acts were brought forward, so the determination of the Claims Examiner will be upheld.

DECISION

The employer's request for a continuance is denied.

The Claimant was discharged, but not for misconduct connected with the work within the meaning of Section 6(b) or Section (6(c) of the Law.

The determination of the Claims Examiner is affirmed.



Seth Clark
Hearing Examiner

Date of Hearing: November 25, 1987

Cassette: 7171

Specialist ID: 45535

Copies Mailed on December 23, 1987 to:

Claimant

Employer

Unemployment Insurance - Northwest (MABS)