



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

**STATE OF MARYLAND**  
HARRY HUGHES  
Governor

**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

**— DECISION —**

Decision No.: 324-BH-85

Date: May 28, 1985

Appeal No.: 00694

S. S. No.:

Claimant: Thomas L. Martz

Employer: Maryland State Dept. of  
Personnel  
ATTN: Rebecca Warren

L.O. No.: 4

Appellant: EMPLOYER

**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 27, 1985

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Rebecca Warren,  
Admin. Officer ;  
Harold E. Spisker,  
Witness ;  
Leo Remele, Perk.  
Officer

## 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 notes that although neither inmate who actually named the claimant was present to testify (in fact, one of the inmates had committed suicide), the Board finds that the documentary evidence presented by the employer as well as the live testimony of the chief of security who did personally speak with these inmates, was more than substantial and meets the employer's burden of proof in this case. Although the claimant did appear before the Appeals Referee, his testimony was outweighed by the other evidence.

## FINDINGS OF FACT

The claimant was employed by the State of Maryland at the Maryland Correctional Institution in Hagerstown as a Correctional Officer from August 11, 1982 until on or about December 21, 1983, when the claimant was suspended without pay, pending discharge, and charges for his removal were placed against him.

Sometime shortly prior to November 24, 1983, the claimant participated in bringing contraband into the prison for the specific purpose of it being passed on to inmates. The contraband, which consisted of blades or hacksaws, was used by six inmates in their attempted escape on November 25, 1983. When five out of the six inmates were later apprehended, two of them named the claimant, Officer Martz, as the person who had brought the blades into the prison.

As a result of this incident, charges were placed against the claimant for his removal. The claimant, who denied the charges at that time, requested and was given a polygraph test. The polygraph test was administered on December 16, 1983. The results were that the claimant was found to be deceptive in answering the relevant questions regarding the attempted escape. One of the inmates who had named the claimant also took the polygraph test and he was found to be telling the truth on the relevant questions.

## CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant was suspended pending discharge for a deliberate and willful disregard of standards of behavior which his employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct connected with the work within the meaning of §6(b) of the law. There could not be a clearer example of gross misconduct than a correctional officer who aids in the escape of inmates in a correctional institution by providing them with the means of their escape.

The Board further notes that, although at the time that the Board heard this case, the claimant was only suspended, a disqualification under §6(b) is the proper disqualification in this case. As of July 1, 1984, the legislature amended §6(b) so that a claimant may be disqualified for gross misconduct even if he or she has only been suspended and not discharged. The Board concludes that the intent of the legislature in adding the words "or suspended as a disciplinary measure" into §6(b) was clearly intended to close a loophole that had resulted in gross injustice and that the legislature intended for the change to be applied to cases pending adjudication. Therefore, under the rationale of the case of Janda v. General Motors Corp., 237 Md. 161,205 A.2 228 (1964), the Board concludes that we can and should apply the law in effect when we decide the case and that therefore the claimant may be disqualified under §6(b) of the law. See also, Baltimore Typographical Union No. 12 v. Hearst Corp., 246 Md. 308,228 A.2 410 (1967).

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning December 21, 1983, and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,600) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

  
Associate Member

  
Associate Member

  
Chairman

W:D:K

kbm

Date of Hearing: June 26, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Maryland Correctional Institute

UNEMPLOYMENT INSURANCE - HAGERSTOWN



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383-5040

BOARD OF APPEALS  
 THOMAS W. KEECH  
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 Appeals Counsel  
 MARK R. WOLF  
 Administrative  
 Hearings Examiner

- DECISION -

CLAIMANT: Thomas L. Martz

DATE: Feb. 27, 1984

APPEAL NO.: 00694-EP

S. S. NO.:

EMPLOYER: State Dept. of Personnel  
 Attn: Rebecca Warren

L. O. NO.: 04

APPELLANT: Employer

ISSUE:

Whether the claimant is subject to a disqualification of benefits 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 **March 13, 1984**

**-APPEARANCES -**

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Leo J. Remele-  
 Personnel Officer

FINDINGS OF FACT

The claimant has a benefit year effective December 18, 1983. His weekly benefit amount is \$160. The claimant was employed by the State of Maryland, working at the Maryland Correctional Institute in Hagerstown where he began his employment on August 11, 1982. He was performing duties as a Correctional Officer II at \$15,520 per year at the time of his removal on December 21, 1983.

The testimony reveals that the claimant is currently suspended, without pay, pending charges for removal by the State. The hearing for his removal was scheduled for February 21, 1984, but has been postponed by the claimant's attorney.

The claimant was removed from service for allegedly bringing contraband into the institution which also aided in a prison break. However, the employer has offered no particulars about these allegations, nor has he furnished any witnesses to any of these allegations.

The claimant has remained unemployed from December 21, 1983 to the present.

#### CONCLUSIONS OF LAW

In the absence of evidence to the contrary offered by the employer at the Appeal Hearing, there is not sufficient evidence to base a finding of misconduct within the meaning of Section 6(c) of the Law. The determination of the Claims Examiner is affirmed.

#### DECISION

The claimant was discharged, but not for misconduct connected with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification will be imposed, based on his separation from his employment with the Maryland Correctional Institution at Hagerstown. The claimant may contact the Local Office concerning the other eligibility requirements of the Law. The determination of the Claims Examiner is affirmed.

The employer's protest is denied.

  
\_\_\_\_\_  
William R. Merriman  
APPEALS REFEREE

Date of hearing: February 10, 1984

Cassette: 853

hf (Baumann)

COPIES MAILED TO:

Claimant  
Employer  
Unemployment Insurance-Hagerstown

Md. Correctional Institute-Hagerstown  
Attn: Mr. Leo Remele, Personnel Officer