

- D E C I S I O N -

Claimant:
JOHN E. HERCHE

Employer:
ROCK-TENN COMPANY

Decision No.: 00329-BR-94

Date: February 16, 1994

Appeal No.: 9324503

S.S. No.:

L.O. No.: 09

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- N O T I C E O F R I G H T O F A P P E A L T O C O U R T -

You *may* file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: March 18, 1994

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant admits to a continued alcohol and drug problem. The employer, at its expense, placed him in rehabilitation. The claimant signed the substance abuse policy which stated he was to remain sober. He was arrested on a Friday evening. A woman, believed to be the claimant's wife, telephoned his place of employment on Monday morning and immediately requested his vacation time for a "family emergency".

On behalf of Mr. Herche, the woman misrepresented his arrest as a "family emergency" to his employer, stating that he immediately had to go to Florida. In reality, this was an "emergency" created by the claimant. The employer gave the claimant a weeks' vacation with the understanding that this "emergency" did not afford the claimant an opportunity to give more than a few hours notice.

If the real reason for his absence was known to the employer, this would have resulted in his termination; therefore, the claimant had his wife (or a person believed to be his wife) call into his place of employment with a false excuse for his absence. This shows a wanton disregard to his employment obligations.

Using legitimate vacation time under false and misleading circumstances with little or no notice to the employer is a deliberate and willful disregard of standards of behavior that the employer had a right to expect and shows gross indifference to the employer's needs. The unexpected loss of an employee can cause a loss of productive time, and an undue burden on fellow employees.

In order to find gross misconduct, the Board must not look simply at substandard conduct, but for willful and wanton state of mind accompanying the conduct. By violating the drug policy and misrepresenting his arrest as a "family emergency" and lying about his actual whereabouts during company time the claimant has shown conduct that evinces an utter disregard to the employer and was calculated to disrupt the discipline and order requisite to proper management of the company.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Title 8, Section 1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning September 19, 1993 and until he becomes re-employed, earns at least twenty times his weekly benefit amount (\$4,460) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr.
Associate Member



Hazel A. Warnick, Chairperson

km

Copies mailed to:

JOHN E. HERCHE
ROCK-TENN COMPANY
ROBERT W. BRISTOL, ESQUIRE
Local Office - #09

UNEMPLOYMENT INSURANCE APPEALS DECISION

JOHN E. HERCHE

Before the:

**Maryland Department of Economic and
Employment Development
Appeals Division**

SSN #

1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 333-5040

Claimant

vs.

ROCK-TENN COMPANY

Appeal Number 9324503
Appellant: Employer
Local Office: 09 / Towson

December 21, 1993

Employer/Agency

For the Claimant: PRESENT

For the Employer: PRESENT, KAREN ROSSI, HAROLD BURNS

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 -1002.1 (gross/aggravated misconduct connected with the work) or 1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant was employed from September 12, 1972 until September 24, 1993 as a cutting press man, earning \$12.43 per hour.

On September 24, 1993, the claimant was arrested for possession of controlled dangerous substance. The arrest took place on Merritt Boulevard in the Dundalk section of Baltimore County, while the claimant and another individual were driving in a truck.

On September 26, 1993, the claimant's wife called the employer and requested that the claimant be given his two weeks vacation time early due to a "family emergent y." The employer granted the

request for the two weeks vacation time. When the claimant appeared for work at the termination of the two-week period, on October 3, 1993, he was instructed not to punch in, but to come in the next day to meet supervision. On the next day, October 4, 1993, the claimant was terminated for having been arrested for violation of a controlled dangerous substance.

The claimant had a long standing drug/alcohol problem of which the employer was aware. The employer had a strict drug alcohol abuse policy and had offered the claimant, in the past, a free drug program, of which the claimant had taken advantage. When the employer found out that the claimant had been arrested for drug possession, it decided to terminate the claimant for violation of its drug/alcohol policy.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1003(a)(b) provides for disqualification from benefits where a claimant is discharged for actions which constitute 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 the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

EVALUATION OF EVIDENCE

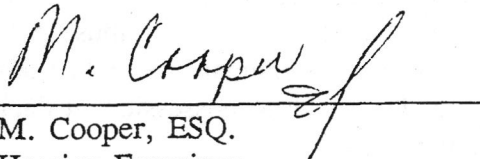
The undisputed evidence in this case is that the claimant was arrested on charges of possession of controlled, dangerous substances on September 24, 1993, while in a vehicle on a public highway. The "conduct" of the claimant in this case is, therefore, clearly, "not connected" with the work within the meaning of the Maryland Code. The claimant was discharged for violation of company drug policy, but not for misconduct in connection with the work within the meaning of the Law.

DECISION

The claimant was discharged, but not for misconduct connected with the work, within the meaning of Maryland Code, Title 8, Section 1003. No disqualification is imposed, based on claimant's separation

from employment with Rock-Tern Company. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.


M. Cooper, ESQ.
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by January 5, 1994

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: December 6, 1993
CMD/Specialist ID: 09650
Seq. No. :002

Copies mailed on December 21, 1993 to:

JOHN E. HERCHE
ROCK-TENN COMPANY
LOCAL OFFICE #09