

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer*  
Governor  
*Mark L. Wasserman*  
Secretary  
  
*Board of Appeals*  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: (410) 333-5032

**- DECISION -**

Claimant:	Decision No.:	03593-BR-94
ARTHUR E. BOURGEOIS	Date:	October 20, 1994
	Appeal No.:	9412443
	S.S. No.:	
Employer:	L.O. No.:	40
GENERAL MOTORS CORP	Appellant:	Claimant
NAO COMPNSTN TX COMPLNC		

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.

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**- NOTICE OF RIGHT OF APPEAL TO COURT -**

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: November 19, 1994

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**REVIEW ON THE RECORD**

The Board adopts the following additional finding of fact and reverses the decision of the Hearing Examiner.

According to the claimant unrefuted testimony, his supervisor confronted him in a verbally abusive manner and physically assaulted him. The claimant knocked away the supervisor's hand when he attempted to make physical contact with him. The Board finds that the claimant's action of self defense in this instance does not rise to the level of misconduct.

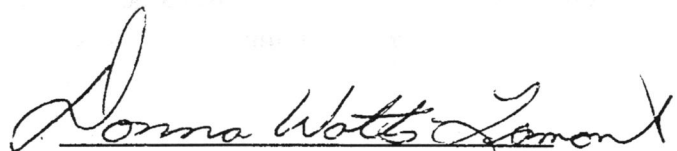
The Board finds no evidence in the record to show that the claimant did nothing more than any reasonable person would have done when confronted by the supervisor's inflamed actions during their "heated" argument. In light of the situation, the history of conflict between the supervisor and the claimant, and the fact that the employer re-instated the claimant just weeks later, the Board finds that the claimant's actions do not constitute misconduct as defined in Maryland Labor and Employment Article, Title 8, Section 1003.

The Board notes that the employer, duly notified of the hearing, failed to appear.

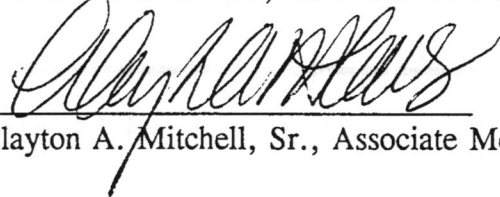
### DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with General Motors Corp.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

kjk

Copies mailed to:

ARTHUR E. BOURGEOIS  
GENERAL MOTORS CORP  
GENERAL MOTORS CORP  
Local Office - #40

supervisor was extremely hostile and instigated an argument between the claimant. The claimant acknowledges using inappropriate and derogatory language towards his supervisor. As a result of this, the claimant was discharged from the employment.

It should be noted that the claimant was reinstated by the employer on or about June 29, 1994. The claimant is still presently an employee of General Motors at this time. He did not receive any compensation for the period of time that he, was off from work.

Although duly notified of this hearing, the employer failed to appear and present any evidence in this matter.

### **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 from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113).

### **EVALUATION OF EVIDENCE**

In the instant case, the claimant was discharged as a result of an altercation with his supervisor on May 7, 1994. The claimant had complained previously, as he found impediments to properly performing his duties. Although it appears that the claimant's supervisor instigated this altercation on May 7, 1994, it was inappropriate for the claimant to use derogatory language towards his supervisor. This constitutes misconduct by the claimant under Section 1003 of the Maryland Unemployment Insurance Law. However, only the minimum penalty is warranted under that Section of the Law.

### **DECISION**

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Title 8, Section 1003. Benefits are denied for the week beginning May 1, 1994, and for the four weeks immediately following thereafter.

# **UNEMPLOYMENT INSURANCE APPEALS DECISION**

ARTHUR E. BOURGEOIS

Before the:

**Claimant**

vs.

GENERAL MOTORS CORP  
NAO COMPNSTN TX COMPLNC

**Employer/Agency**

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

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

Appeal Number 9412443  
Appellant: Claimant  
Local Office: 40 / Eastpoint

July 29, 1994

**For the Claimant: PRESENT**

**For the Employer:**

**For the Agency:**

## **ISSUE(S)**

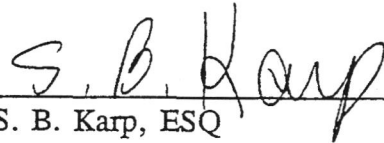
Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 -1002.1 (gross/aggravated misconduct connected with the work) or 1003 (misconduct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

## **FINDINGS OF FACT**

The claimant was employed from 1976 until May 7, 1994, with General Motors Corporation. The claimant's position was as a Line Worker/Assembler, earning \$18.23 per hour.

The claimant was suspended from his "employment as a result of an incident which occurred on May 7, 1994. The suspension was then turned in to a discharge from employment as of May 9, 1994. The claimant had been working in a fairly new position for the employer. In that position, the claimant had been incurring some problems in performing his duties. Specifically, other employees were hindering the claimant from properly performing his duties. The claimant complained to his supervisor, but no action was taken. The claimant then filed a complaint with his union. Apparently, as a result of this, the claimant's supervisor approached him while working on the line. The

The determination of the Claims Examiner is modified.

  
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S. B. Karp, ESQ  
Hearing Examiner

**Notice of Right of Further Appeal**

Any party may request a further appeal 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 **August 15, 1994.**

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

Date of hearing: July 18, 1994

RC/Specialist ID: 40302

Seq. No.: 001

Copies mailed on July 29, 1994 to:

ARTHUR E. BOURGEOIS  
GENERAL MOTORS CORP  
LOCAL OFFICE #40