

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
*Telephone: (301) 333-5032*

*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

**— DECISION —**

|           |  |               |          |
|-----------|--|---------------|----------|
|           | Decision No.:  | 394-BR-92     |          |
|           | Date:  | Feb. 28, 1992 |          |
| Claimant: | Maurice Oakley   | Appeal No:    | 9114920  |
|           |  | S. S. No.:    |          |
| Employer: | Progress Unlimited, Inc.   | L. O. No.:    | 45       |
|           |  | Appellant:    | CLAIMANT |
| Issue:    | Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. |               |          |

---

**— 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

March 29, 1992

THE PERIOD FOR FILING AN APPEAL EXPIRES

---

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact and conclusions of law of the Hearing Examiner.

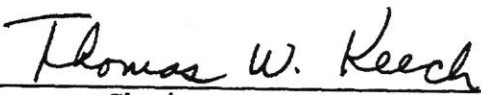
The Board finds as an additional fact that the claimant did not call the beeper numbers as required. The Board makes the additional conclusion of law that the claimant's failure to make a reasonable effort to notify the employer that he would not be in on July 5 constituted misconduct.

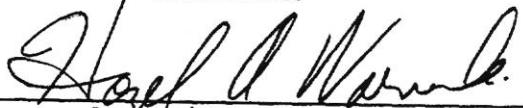
The Board also notes that, for unemployment insurance law purposes, it is not relevant whether the claimant was owed more warnings prior to discharge.

#### DECISION

The claimant was discharged for misconduct, connected with his work, within the meaning of Section 8-1003 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning June 30, 1991 and the four weeks immediately following.

The decision of the Hearing Examiner is affirmed.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer, Governor*

*J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner*  
*Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

*Telephone: 333-5040*

REMAND  
— DECISION —

Date: Mailed: 01/07/92  
Appeal No.: 9114920  
S. S. No.:  
Claimant: Maurice Oakley  
Employer: Progress Unlimited, Inc. L.O. No.: 045  
ATTN: Mary Gatto, V. P. Personnel Appellant: CLAIMANT  
11438 B Cronridge Drive  
Wings Mills, MD 21117

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

---

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 January 16, 1992

---

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Maurice Oakley - Present

Mary Gatto, Vice  
President of  
Personnel

FINDINGS OF FACT

The claimant was employed as a residential counselor in a residential program for developmentally disabled adults from

February 9, 1990 until July 5, 1991, earning \$5.00 per hour for full-time work.

The claimant was discharged for failing to notify the employer of his absence on July 5, 1991.

The employer's policy states that if an employee is unable to report to work, he is required to notify his supervisor four hours prior to the start of his shift. This policy is outlined in the employees' handbook which is given to each employee at the time of hire. Each employee is issued an identification card with two beeper numbers printed on it. These are the numbers an employee is supposed to call in the event that the employee is unable to report to work. The beepers are available twenty-four hours a day. One of the numbers leads to the director of staffing. If the director of staffing cannot be reached, the employee should call the second number which leads to the director of nursing. It is the job of these two individuals to respond to the beeper. If the beeper is called, it gives off a beep and it also vibrates. The beeper has a one-hundred mile range.

The claimant's usual work hours were Monday through Friday, 5:00 p.m. to 11:00 p.m. From 11:00 p.m. to 6:00 a.m., the claimant slept at the residential home. He then worked from 6:00 a.m. until 7:30 a.m. and was off until 5:00 p.m. Several weeks prior to his discharge, the claimant's supervisor had given him permission to leave the residential home between 11:00 p.m. and 6:00 a.m. as long as he was back on the premises by 6:00 a.m.

On July 4, 1991, the claimant left the residential home between the hours of 11:00 p.m. and 6:00 a.m. and went to his own home. The following morning he was scheduled to be at work at 6:00 a.m. The testimony established that the claimant was ill and unable to report to work on July 5, 1991. He allegedly called his supervisor on the beeper number six times between 5:30 a.m. and 6:00 a.m., but received no response.

The testimony established that both of the employer's beepers were operating that morning and that other calls were logged in, however, neither the director of staffing nor the director of nursing received any calls from the claimant.

The testimony also established that the employer has an answering machine that accepts messages. However, no messages were left on this machine about the claimant's absence on July 5, 1991.

Subsequently, the claimant was informed that he had been terminated for failing to notify the employer of his absence on

July 5, 1991.

#### CONCLUSIONS OF LAW

It has been held that as a condition of employment, an employer has the right to expect his workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detainment or emergency, to receive prompt notification thereof. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). Failure to meet this standard amounts to misconduct within the Code of Maryland, Labor and Employment Article, Title 8, Section 1003 (a) (b).

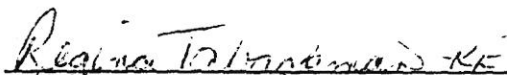
In the instant case, the claimant was required to notify his supervisor four hours prior to the start of his shift if he was unable to report to work. The claimant was given two beepers numbers to call in case of his absence. On the day of his absence, both of the beepers were operating, however, neither the director of staffing nor the director of nursing received any calls from the claimant notifying them of his absence. There was also no message left on the employer's answering machine.

#### DECISION

The claimant was discharged for actions which constitute misconduct in connection with the work, within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1003.

Benefits are denied the week beginning June 30, 1991 and for the four weeks immediately following.

The determination of the Claims Examiner is affirmed.

  
Regina Tabackman  
Regina Tabackman  
Hearing Examiner

Date of Hearing: 10/04/91  
kc/Specialist ID: 45541  
(Cassette Attached to File)

Copies mailed on 01/07/92 to:

Claimant  
Employer  
Unemployment Insurance - Northwest (MABS)

Board of Appeals