

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

- DECISION -

Decision No.:	438 -SE-88
Date:	June 1 , 1988
Claimant:	Joseph R. Shivery
Appeal No.:	8711025
	21915
S. S. No.:	
Employer:	Slagle's Construction Co. ,
	Inc.
	Owner
L. O. No.:	13
Appellant:	EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 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

July 1, 1988

- APPEARANCES -

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Carrel Slagle, Owner
Michael Carter,
Foreman

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony taken at the hearing before the Special Examiner. 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.

FINDINGS OF FACT

The claimant worked at Slagle's Construction Company, Inc. from July, 1987 until September 17, 1987. His position was that of a carpenter. He was earning \$7.00 an hour, and he was required to work 40 hours per week.

The claimant was discharged by the owner, Carrel Slagle, for lying about an alleged job-related injury, which allegedly occurred three weeks prior to the claimant's last day of work.

The claimant's last day of work, as noted on the Agency Form 207, was September 17, 1987. On Friday, September 18, 1987, the claimant did not report for work, but he did report to pick up his last pay check. On this date, the claimant advised the owner, Carrel Slagle, that he would need one or two weeks off, as he was going to seek medical attention for an on-the-job injury to his back. On September 18, 1987, he further advised the owner that he had injured his back, several weeks prior, while on the employer's job site.

The employer has a verbal policy, of which the claimant was aware, concerning the reporting of job-related injuries to management. If one of the employer's men injures himself on the job site, the employee must report the injury to either the employer's foreman, or the owner, by the end of the work day on which the alleged job-related injury occurs.

On the day the claimant's injury was alleged to have taken place, both the foreman, Michael Carter, and the owner, Carrel Slagle, were on the claimant's specific job site; however, neither individual was approached by the claimant and advised by him that he had injured his back on that day.

The claimant did not injure himself while working for this employer. The claimant was attempting to collect workman's compensation, against this employer.

The claimant was discharged by the employer for fabricating an on-the-job injury. As a result of this fabrication, the employer could no longer trust the claimant as an employee on his construction crew.

CONCLUSIONS OF LAW

The term "gross misconduct" is defined in Section 6(b) of the Maryland Unemployment Insurance Law as a deliberate and willful disregard of standards of behavior, which an employer has a right to expect, showing a gross indifference to the employer's interest.

The claimant's verbal submission of a false job-related injury to his employer, so as to collect workman's compensation, is held to be gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Therefore, the decision of the Hearing Examiner, which found the claimant was separated for neither misconduct nor gross misconduct in connection with his work, within the meaning of the Maryland Unemployment Insurance Statute, will be reversed.

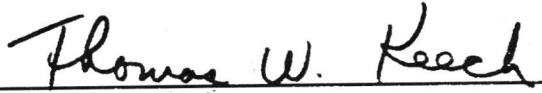
A disqualification of benefits will be imposed within the meaning of Section 6(b) of the Maryland Unemployment Insurance Statute.

DECISION

The claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 13, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

DW:K

Date of Hearing: May 11, 1988

COPIES MAILED TO:

CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - ELKTON

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 29, 1987
Appeal No: 8711025
S.S. No.:
Employer: Slales Co., Inc. L.O. No.: 13
Appellant: Claimant
Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.

--- NOTICE OF RIGHT OF FURTHER APPEAL ---

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

January 13, 1988

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

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--- APPEARANCES ---

FOR THE CLAIMANT:
Present

FOR THE EMPLOYER:

FINDINGS OF FACT

The Claimant filed an original claim for unemployment insurance benefits effective September 27, 1987.

The Claimant was employed by Slales Company, Inc. , for approximately three months, his last job classification as a framer at an hourly

wage rate of \$7.00. He last worked for this employer on or about September 19, 1987.

The Claimant while working injured himself by falling through a stairway from the second floor to the first floor, falling at least ten feet landing on his feet. He reported this incident to supervision but did not feel hurt. He thereafter, worked nine out of his last ten scheduled work days. However, he was complaining to supervisors and co-workers that his back was hurting and his co-workers and supervisors would do the heavy lifting for him. On his ninth consecutive scheduled work day after the incident, the Claimant called his employer to inform him that he was now seeking medical attention due to a back problem. He was immediately terminated for his employer did not believe that he was hurt on the job two weeks prior and he continued to work.

CONCLUSIONS OF LAW

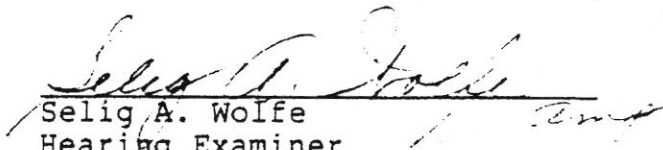
The employer's actions in terminating the Claimant due to disbelief that an accident on the job occurred and the Claimant thereafter worked the next nine scheduled work days, are reasons for termination which do not constitute misconduct or gross misconduct in connection with ones work within the meaning of Section 6 of the Maryland Unemployment Insurance Law.

In the instant case, the Claimant immediately reported the accident to supervision. Working the next nine scheduled work days and thereafter seeking medical attention only demonstrates loyalty to his employer especially in view of the fact that supervision and co-workers would help the Claimant do heavy lifting. Under the above facts, the determination of the Claims Examiner shall be reversed.

DECISION

The Claimant was terminated from his employment but not for acts demonstrating misconduct or gross misconduct in connection with ones work within the meaning of Section 6 (c) and 6(b) of the Maryland Unemployment Insurance Law. The denial of benefits for the week beginning September 13, 1987 and until the Claimant again becomes reemployed and earns at least ten times his weekly benefit amount is rescinded.

The determination of the Claims Examiner is reversed.


Selig A. Wolfe
Hearing Examiner

Date of Hearing: November 23, 1987

Cassette: 7137

Specialist ID: 13367

Copies Mailed on December 29, 1987 to:

Claimant

Employer

Unemployment Insurance - Elkton (MABS)