

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER  
Appeals Counsel

MARK R. WOLF  
Chief Hearing Examiner

— DECISION —

Decision No.: 445-BR-87

Date: June 24, 1987

Claimant: Fair L. Thompson

Appeal No.: 8614005

S. S. No.:

Employer: The Chesapeake Paperboard  
Company  
ATTN: Janice Howard  
Personnel Admin.

L.O. No: 1

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.

July 24 , 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The Board concludes that the actions of the claimant constitute gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. The claimant, who had been fired, reinstated, suspended and warned on numerous occasions about his work performance, especially in relation to being absent and missing time, was several hours late for work on his last day. The reason the claimant was late on this day was on account of a conscious and voluntary decision he made. The claimant was, at the time, returning from a journey out of state. He took a bus which would not even arrive in Baltimore until approximately five hours after his work shift. The claimant's own testimony was that the reason he did this was because he felt that he needed the rest.

The claimant did not call his employer, either from North Carolina or Baltimore, with the news that he had decided to take a later bus. The remainder of the evidence concerning the claimant's injured ankle and the issue of whether or not he was intoxicated when he did report to work at least six hours late on his last day of work is basically irrelevant to his case. The claimant had already made a conscious decision not to show up for work for the bulk of the work day in question prior to any problems with his ankle occurring, and prior to any alleged intoxication problems.

Where a claimant has been warned and suspended on account of problems with absenteeism and lateness, his deliberate decision to arrive at work at least five hours late because he "needed a rest," coupled with his failure to even inform the employer of this decision, is a deliberate violation of standards his employer has a right to expect, showing a gross indifference to his employer's interests. This meets the definition of gross misconduct under Section 6(b) of the law, and the Hearing Examiner's decision will be reversed accordingly.


The Board of Appeals does admit into evidence the affidavit submitted by the employer which was mailed by registered mail and received by this department on the date of the hearing. The Board notes, however, that even without this additional evidence, the Board's findings of fact and conclusions of law, as stated above, would remain unchanged.

#### DECISION

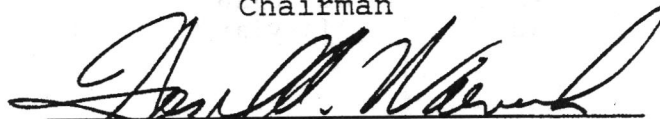
The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 2, 1986

and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,950), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed. The decision of the Claims Examiner is reinstated.



Chairman

  
Associate Member

K:W

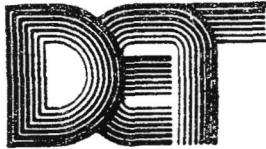
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

**STATE OF MARYLAND  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201**

**(301) 383-5040**

**STATE OF MARYLAND  
HARRY HUGHES  
Governor**

**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 —**

**Date: Mailed: 1/21/87**

**Claimant: Fair L. Thompson**

**Appeal No.: 8614005**

**S. S. No;**

**Employer: Chesapeake Paperboard Co.**

**L.O. No.: 01**

**Appellant: Claimant**

**Issue:** Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Section 6(c) or 6(b) of the Law. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c)(3) 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 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 **February 5, 1987**

**— APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

Not Represented

**FINDINGS OF FACT**

The claimant began working for the employer, a manufacturer, sometime in July 1985 as a full-time Pulp Helper. His last day of work was November 7, 1986, when he was discharged from the employment for violations of the employer's work rules.

The testimony reveals that the claimant had been discharged in July 1986 for a violation of the employer's work rules, but had been reinstated through the efforts of his union.

Prior to the claimant's discharge, he had last worked on Friday, November 7, 1986 on a 3 to 11 p.m. shift. He then left with a cousin to attend an uncle's funeral in North Carolina. While transferring from one bus to another in Raleigh, North Carolina, he injured his ankle while leaving a bus. The claimant was scheduled to report for work at 7 a.m. on November 10, 1986. His shift on that day was from 7 a.m. to 3 p.m. He did not report to the plant until sometime between 2 and 3 p.m. He was not allowed into the plant and his supervisor went to the guard shack and informed the claimant he was discharged for not reporting to work as scheduled and for not calling in. It was alleged that the claimant was under the influence of alcohol, which the claimant vigorously denies and is not confirmed by any testimony or evidence at this hearing. The claimant had received three written warnings and was suspended on one occasion, the exact dates of which are unknown.

The claimant is an admitted alcoholic, is medicated with Antibus and is attending and participating in the Alcoholics Anonymous Program.

#### CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, is not supported by any testimony or evidence before the Hearing Examiner. Based on the weight of the testimony, and in the absence of any testimony or evidence on the part of the employer, it must be concluded that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law rather than Section 6(b) for gross misconduct under the Law. There is a lack of substantial evidence that the claimant reported to work under the influence of alcohol. The claimant was derelict in his responsibility by reporting for work late and not notifying his employer that he would be reporting late. This was also a violation of the employer's work rules. It is for this reason the determination of the Claims Examiner shall be reversed and the claimant disqualified accordingly.

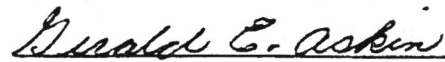
The claimant had good cause for an appeal filed late within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

DECISION

The claimant had good cause for an appeal filed late within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning November 2, 1986 and the nine weeks immediately following.

The determination of the Claims Examiner is reversed.



Gerald E. Askin  
Gerald E. Askin  
Hearing Examiner

Date of hearing: 1/16/87  
Cassette: 8147 & 6148  
hf (Merryman)

Copies mailed on 1/21/87 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore