

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*Mark L. Wasserman, Secretary*

*Board of Appeals*  
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*Baltimore, Maryland 21201*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

Claimant:	Dorothy Gordon	Decision No.:	487-BR-93
		Date:	April 21, 1993
		Appeal No.:	9225463
		S. S. No.:	
Employer:	Baines Management Co. c/o The Gibbens Company ATTN: Christopher Pfeltz	L. O. No.:	1
		Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article.		

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—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES

May 21, 1993

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals makes the following findings of fact and reverses the decision of the Hearing Examiner.

The claimant was employed from September 10, 1991 until October 26, 1992, as a porter.

On October 11, 1992 the employer instituted a drug testing program at the work place. All employees were paid to attend a mandatory meeting at which the company's drug policy was explained. At that meeting the claimant signed a Release and Consent to Alcohol and Drug Testing form. In this form the claimant indicated that she was not a current user of illegal drugs.

On October 13, 1992 the claimant was selected for a drug screening test. The test results were positive for the presence of cannabinoids, indicating marijuana use by the claimant.

The claimant was taken off the work schedule as a result of this positive drug test. The claimant could have returned to work if she presented a negative drug test to the employer within thirty days. The employer had made arrangements for employees to be tested at a lab that would bill the company at a reduced rate for this additional testing. This cost would later be repaid by the employee through payroll deductions upon their return to work.

After meeting with the claimant on October 26, 1992 to inform her of her options, the employer had no further communications with the claimant.

The claimant never attempted to obtain a negative test result.

#### CONCLUSIONS OF LAW

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and wilful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

As a result of her employer's drug testing program the claimant tested positive for the presence of cannabinoids, an illegal drug, in her system.

The Board concludes that the employer's rule forbidding the employees to report to work with a detectable residue of illegal drugs in her system was reasonable.

The only serious problem in this case is the timing of events. Since detectable signs of drug use can remain in the system for some time, the employer's testing of the claimant two days after the program was initiated raises the concern that the employer may have discharged the claimant for something which

she had done on her own time and against which there was no employer rule at the time. Since the claimant was given a second chance to report to the employer drug free at a later date, however, the Board concludes that the employer acted reasonably, when the whole sequence of events is considered.

The claimant's failure to abide by the employers rule was a deliberate violation of standards that the employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct within the meaning of §8-1002 of the law.

#### DECISION

The claimant was discharged for gross misconduct, connected with the work, as defined in §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning October 25, 1992 and until she becomes reemployed, earns ten times her weekly benefit amount (\$1,010) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

DW:K  
kbm  
COPIES MAILED TO:

CLAIMANT  
EMPLOYER  
UNEMPLOYMENT INSURANCE - BALTIMORE

Piper & Marbury  
ATTN: Lynette M. Phillips

 **Maryland**  
Department of Economic &  
Employment Development

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**- D E C I S I O N -**

Claimant: Dorothy J. Gordon Date: January 2, 1993  
Appeal No: 9225463  
S. S. No.: \_\_\_\_\_  
Employer: Baines Management Co., Inc. L.O. No.: 1  
c/o The Gibbens Co., Inc. Appellant: Employer

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

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

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

**January 18, 1993**

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON  
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**- A P P E A R A N C E S -**

FOR THE CLAIMANT:  
**Present**

FOR THE EMPLOYER:  
**Gadsie Wilkens -**  
**Payroll Department**  
**Henry T. Baines -**  
**President**  
**Gayle Turek -**  
**The Gibbens co., Inc.**

## FINDINGS OF FACT

The claimant's first day of work was September 10, 1991. Her last day of work was October 26, 1992. She was employed as a porter at an hourly rate of pay of \$4.75.

The employer had a meeting on October 11, 1992 and explained to all employees that they were going to a drug free company. They required them to sign a release and consent to alcohol and drug testing, which the claimant signed. (Employer Exhibit No. 1). The claimant tested positive for marijuana. (Employer Exhibit No. 3). Then, she went to the lawyer's meeting where she was required to sign a Rehabilitation and Reinstatement Agreement (Employer Exhibit No. 2).

It is clear from the facts that the claimant was terminated from her employment because she tested positive for marijuana. Further, it is clear from the facts that the claimant never used marijuana on company property, was never impaired at work as a result of marijuana use and the company never suffered any loss as the result of any marijuana use that the claimant may have engaged in.

## CONCLUSIONS OF LAW

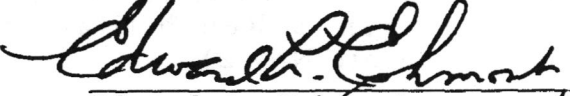

The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1)(i), (ii) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. 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 gross misconduct within the meaning of the Statute.

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, a forbidden act, a dereliction of duty or a course of wrongful conduct committed 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.

DECISION

It is held that the claimant was discharged, but not for gross misconduct nor misconduct connected with the work, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1002 or 1003. No disqualification is imposed upon the claimant based on her separation from employment with Baines Management Company, Inc. The claimant is eligible for benefits from the week beginning October 25, 1992.

The determination of the Claims Specialist is reversed.

  
Edward A. Eshmont  
Hearing Examiner 

Date of hearing: December 29, 1992  
ras\Specialist ID: 01070  
Cassette in File

Copies mailed on January 2, 1993 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)