

 **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.: 494-BR-90

May 23, 1990

Claimant: LaBrenda Butler

Appeal No.: 9002983

S.S. No.:

Employer: Levenson & Klein, Inc.
c/o ADP/UCM Dept.
ATTN: Donna Henry Gardiner

L. O. No.: 40

Appellant: EMPLOYER

1

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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 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.

June 22, 1990

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 does not agree with the Hearing Examiner's evaluation of the evidence. The Hearing Examiner concentrated on the fact that much of the employer's evidence (customer complaints) was hearsay. The Board would agree with this if the employer's evidence were solely hearsay. But the employer's evidence was not entirely hearsay.

The claimant was not only a switchboard operator but was a supervisor of other switchboard operators at the employer's establishment. She was fired because the employer believed that she had been nasty with phone customers and had used foul language on the phone with them.

In addition to the hearsay complaints of the last customer, there was evidence that the employer conducted a test over the telephone during which the customer definitely identified the claimant as the offending person. The claimant did not dispute this evidence, and it is sufficient to prove that the claimant was the offending switchboard operator. More importantly, the claimant admitted at the hearing that she was the offending operator and that she had been "short-tempered" with this customer.

This evidence not only establishes that the claimant was the offending operator in this third incident, but it also lends weight to the other hearsay testimony about the previous two complaints. All three complaints concerned nasty treatment and foul language. All identified a woman with a deep voice such as the claimants. Although this evidence is perhaps not sufficient to make a finding of fact as to the exact words stated, it is sufficient to establish that the claimant was rude to three customers.

Rudeness to customers is bad enough, but this rudeness on the part of a switchboard operator whose very duty was to interact courteously with the public is worse. In addition, the claimant was a supervisor of the switchboard operators, with an added responsibility to assure courteous service to the public. In addition, the claimant was on two occasions warned that the employer took such discourtesy very seriously and that one proven offense would lead to discharge.

In light of all these factors, the claimant's rudeness to the last customer constituted a deliberate violation of standards her employer had a right to expect showing a gross disregard for the employer's interest. This is gross misconduct within the meaning of Section 6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning January 14, 1990 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$1,850) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:DW

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



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

- D E C I S I O N -

	Date:	Mailed: 3./27/90
Claimant:	LaBrenda Butler	Appeal No.: 9002983
Employer:	Levenson and Klein, Inc. C/O A D P, Chesapeake Region	L.O. No: 040 Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON **April 11, 1990**

- A P P E A R A N C E S -

FOR THE CLAIMANT:	FOR THE EMPLOYER:
Claimant - Present	Charles Malchior, Personnel Director William Oeser ADP

FINDINGS OF FACT

The claimant was employed by Levenson and Klein from November 29, 1988 through January 15, 1990. At the time of her separation from

employment, the claimant was a switchboard operator earning \$6.00 per hour.

The claimant was terminated by the employer because of three customer complaints that were filed. Each customer stated that a switchboard operator had used profanity in talking to them. On one occasion or occurrence, the claimant admitted that in talking to the customer she may have been short with her but at no time did she admit to using any profanity in her dealings with customers. Still, the employer terminated the claimant.

The claimant has been employed since March 5, 1990.

CONCLUSIONS OF LAW

Section 6(b) of the Maryland Unemployment Insurance Law requires the denial of benefits until re-employment when it is held that an individual was discharged for gross misconduct connected with her work. Gross misconduct is defined in the Act as a deliberate and willful disregard of the standards of behavior which an employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded her obligations to the employer. A lesser disqualification is imposed when an individual is discharged for misconduct connected with the work. Misconduct means a substantial deviation from the proper standards of conduct. Both terms connote the element of a deliberate or willful wrongdoing.

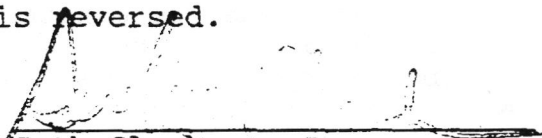
The burden of proving that the claimant's behavior amounts to either gross misconduct under Section 6(b) or misconduct under Section 6(c) rests with the employer. Here, the employer has simply failed to meet that burden. The employer's reliance on hearsay testimony which in no way was substantiated by any other competent testimony or evidence presented cannot be used to meet that burden. This is especially true when the claimant disavows the acts alleged and the claimant's testimony is believable. This was the situation here, and therefore, the determination of the Claims Examiner which found that the claimant was discharged for misconduct must be reversed.

DECISION

The claimant was discharged, but not for any acts that demonstrate gross misconduct under Section 6(b) nor misconduct under Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are allowed the claimant, if she is otherwise eligible under the law.

The claimant may contact the local office concerning those eligibility requirements.

The determination of Claims Examiner is reversed.



Seth Clark
Hearing Examiner

Date of Hearing: March 20, 1990
se/Specialist ID: 40303
Cassette No: 2175
Copies mailed on 3/27/90 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)