

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.: 604-BR-89
July 14, 1989

Claimant: Hakim Sayyed

Appeal No.: 8905041

S. S. No.:

Employer: Guide

L.O. No.: 1

ATTN: Richard Wunderlich, Ph.D.
Director

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 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.

August 13, 1989

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 finds it necessary to make new findings of fact and conclusions of law. Both the findings of fact and the conclusions of law of the Hearing Examiner are incorrect.

Based on the same testimony and evidence presented before the Hearing Examiner, the Board finds the following facts.

The claimant was employed from December of 1988 through April 1, 1989 as a Youth Counselor for the Guide Program of Montgomery County, earning \$11,500 a year for full-time work on Saturdays through Thursdays from 4:00 p.m. until midnight.

The employer hires personnel conditionally, pending completion of a criminal history background check. The claimant complied with his employer's requirements that he assist it in obtaining his criminal record information. The employer did receive the required criminal history information from the police. This record indicated that that claimant had no convictions for, and no pending charges concerning, murder, rape, child pornography, child abduction, kidnapping of a child, or a sexual offense.

on his own application, however, the claimant had reported that he had been convicted of a handgun violation eight years previously. The claimant told the employer that this conviction stemmed from his possession of a registered firearm which he normally had needed in his former profession as a taxi driver.

The employer demanded more information from the claimant. The apparent reason for this demand was the employer's concern over whether the handgun conviction represented an act of moral turpitude or showed a dangerous character trait. The employer suggested several possible sources whereby the claimant might document his version of the conviction. The employer already knew of the conviction itself and was not attempting to obtain further official criminal history on the claimant.

The claimant was either unwilling or unable to provide further information to convince the employer that his handgun conviction was not a conviction showing moral turpitude and was not an indication of a dangerous character trait. The claimant was suspended until he could produce such evidence.

CONCLUSIONS OF LAW

Irrespective of Article 27, Section 754, the employer had not only the right but also the obligation to require the claimant to submit to a criminal history check and to have the results sent to the employer. Family Law Article, Sections 5-560 through 5-568. The claimant duly provided this information, and this information had nothing to do with his being suspended.

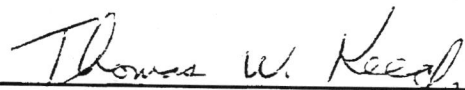
The claimant was suspended because the employer had doubts about his suitability for the job after learning from his own written application that he had a conviction for a handgun violation. The employer was simply unwilling to keep the claimant in its employ unless he could provide some proof that this conviction was, as he stated, simply a technicality rather than evidence of real criminality. The claimant did not provide any such proof¹ and remained suspended.

The burden was on the employer to produce evidence that the suspension was due to misconduct or gross misconduct, connected with the work. The employer has failed to do so in this case. The claimant did not falsify his application. He was allowed to begin work while the employer knew, or should have known, that he had been convicted of a handgun violation eight years before. Later, the employer decided that the conviction would disqualify the claimant from continued employment unless the claimant brought in evidence in mitigation of the criminal conviction. There is simply no misconduct connected with the work present in this case. The conviction itself indicates misconduct, but that misconduct occurred eight years before the application was filed and was certainly not "connected with the work." There is no evidence that the claimant falsified his application or performed any other misconduct on the job. An employer's second thoughts about a claimant's eight-year-old conviction simply do not add up to misconduct, connected with the work.

DECISION

The claimant was suspended, but not for any misconduct or gross misconduct, connected with his work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No penalty is imposed based on his separation from employment with the Guide Program of Montgomery County.

The decision of the Hearing Examiner is affirmed, but for the reasons stated above.


Chairman


Associate Member

K:HW
kbm

¹ The claimant's assertion that the employer's request for more documentation was a violation of Art. 27, Section 754 is without merit. The employer already knew of the conviction. The claimant was being asked to provide evidence of mitigating circumstances, evidence which would not even be found in a criminal history information record.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



Maryland

Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201
(301) 333-5040

— DECISION —

Date: Mailed: May 19, 1989

Claimant: Hakim S. Sayyed Decision No.: 8905041

S. S. No.:

Employer: Guide Program Montgomery County, Inc. L.O. No.: 1

Appellant: Claimant

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 EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION. **ROOM 515**, 1100 NORTH EUTAW STREET. BALTIMORE. MARYLAND 021201. EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON June 5, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Hakim S. Sayyed - Claimant
Senator Troy Bailey

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective April 2, 1989.

The claimant was employed by Guide Program of Montgomery County, Inc., from December of 1988 to on or about April 1, 1989, his last job classification as a Youth Counselor at an annual salary of \$11,500.

The claimant was aware that his continued employment with this employer was subject to a police background check. The claimant did everything possible to expedite this procedure.

The claimant, on his pre-employment application, indicated a handgun violation.

The claimant was cleared by the proper authorities as to whether he was arrested and/or convicted of any crimes dealing with moral turpitude. The claimant understood the position of the employer, in that they were governed by State law.

Annotated Code of the State of Maryland, Article 27, Section 754 makes it unlawful for an employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to "qualify" for employment.

This specific provision of the Law was strenuously pointed out to the claimant by a police officer when the claimant was attempted to get a copy of his criminal record.

The employer could have used any means available to him to obtain a copy of the claimant's criminal record.

The claimant's employment status presently is on suspension until produces his own criminal record which is in violation of the Maryland Statute.

CONCLUSIONS OF LAW

As the claimant was placed in suspension until he provides the employer with a copy of his criminal record and that reason violates the Maryland Statute, the reasons for the claimant's suspension does not constitute any acts of misconduct or gross misconduct in connection with one's work within the meaning of Section 6 of the Maryland Unemployment Insurance Law.

Under the above facts, the determination of the Claims Examiner shall be reversed.

DECISION

The claimant was suspended from employment, but not for any acts demonstrating misconduct or gross misconduct in connection with his work, within the meaning of Section 6(c) or Section 6(b) of

the Maryland Unemployment Insurance Law. The denial of benefits for the week beginning March 26, 1989 and for the nine weeks immediately following is rescinded.

The determination of the Claims Examiner is reversed.


Selig A. Wolfe
Hearing Examiner

Date of hearing: 5/17/89
amp/Specialist ID: 01062
Cassette No. 4356
Copies mailed on May 19, 1989 to:

Claimant
Employer
Unemployment insurance - Baltimore (MABS)