

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT



BOARD OF APPEALS

Thomas W. Keech
Chairman

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

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Hazel A. Warnick
Associate Member

Decision No.: 608-BR-87
Date: Sept. 10, 1987

Claimant: Sherry Freyman

Appeal No.: 8706166

S. S. No.:

Employer: Laurel Toyota, Inc.
c/o Automatic Data Processing

L.O. No.: 2

Appellant: EMPLOYER

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 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.

October 10, 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 adopts the findings of fact of the Hearing Examiner. The Board also finds as a fact that the claimant was counseled by the employer with respect to the need to solve her lateness problem. (This fact was mentioned by the Hearing Examiner but was not found as a fact.)

Based on these facts, the Board reverses the decision of the Hearing Examiner and finds that the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the law.

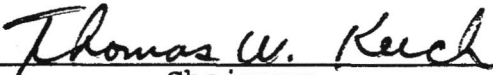
The claimant was late 41 times in a six-month period of time and failed to report for work at all on two days. The claimant was counseled by her employer that her continuing lateness was a problem. This conduct is a series of repeated violations of work rules which shows that the claimant regularly and wantonly disregarded her obligations. This meets the definition of "gross misconduct" in Section 6(b) of the law.

The Hearing Examiner bases his contrary conclusions of law on the fact that the claimant was not specifically warned that continued lateness would result in termination of employment. There is, of course, no requirement in the law that such a specific warning be given. The claimant should have been aware on her own that arriving at work on time is a normal requirement of employment. The employer then advised her that her tardiness was a problem, but she continued to be late until she accumulated 41 instances of lateness in approximately 6 months. To require a specific warning that the continuation of this type of behavior would result in discharge would be an error of law. Any reasonable employee would have realized this, especially after being counseled.

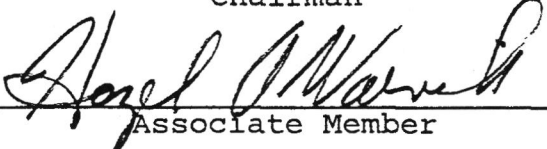
DECISION

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 May 17, 1987 and until she becomes reemployed, earns ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

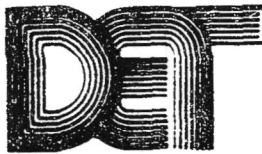
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Theodore S. Litwin, Esq.

UNEMPLOYMENT INSURANCE - GLEN BURNIE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

BOARD OF APPEALS

STATE OF MARYLAND

— DECISION —

	Date: Mailed	7/22/87
Claimant: Sherry A. Freyman	Appeal No.:	8706166
	S. S. No.:	
Employer: Laurel Toyota, Incorporated c/o ADP	L.O. No.:	02
	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 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 August 6, 1987

— APPEARANCES —

FOR THE CLAIMANT

NOT PRESENT

FOR THE EMPLOYER

Represented by Ernie
Ellis, Controller;
and Theodore S.
Litwin, Automatic
Data Processing

EVIDENCE PRESENTED

The employer provides in its termination information documentation showing that the claimant was discharged for missing too many days from work, an evaluation which indicates that punctuality needs improvement, time cards and a summary showing that during the course of the claimant's employment from October, 1986 to May 18, 1987, she was late 41 times for an average of 18 minutes each. At the end of her employment, the

claimant failed to report to work for a couple of days.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Glen Burnie, effective May 17, 1987.

The claimant was employed by Laurel Toyota, Incorporated from October 16, 1986 to May 18, 1987 as a switchboard operator at a pay rate of \$5.75 an hour, working five days per week from 8 a.m. to 5 p.m. The claimant's duties included taking telephone calls and inquiries.

During the course of her employment, the claimant was habitually late for a total of 41 times late, and each occurrence averaging approximately 18 minutes. There was also a number of days the claimant left early. Finally, when, in May, the claimant was absent, again for about two days, she was terminated

CONCLUSIONS O FLAW

The employer through its representative, took pains to indicate that the claimant was "counseled" concerning punctuality and the need to improve. However, there is no evidence in the documentary evidence or in the testimony presented that the claimant was specifically warned that chronic tardiness or absenteeism would not be tolerated. However, the evidence does reflect 41 times late in a six-month period of time and other instances of leaving work early. Added to this, the uncontradicted evidence that the claimant failed to report for work for a period of two days just prior to her termination, for reasons unknown.

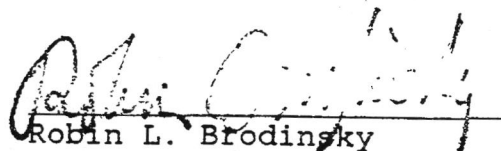
Clearly, the claimant was discharged for tardiness, but such standing alone does not rise to the level of "gross misconduct" as contemplated by the Statute. Heretofore, the Court of Appeals of Maryland has held in Watkins v. Employment Security Administration, 266 Md 223 that where there are absences without notice or excuse and which continue in the face of warnings, such constitutes gross misconduct and is held to be a ground for disqualification. However, in this case, as previously indicated, the employer took great pains to indicate that the claimant was "counseled" and not "warned". The claimant's evaluation indicated a need to improve punctuality but does not contain any warnings to indicate jeopardy of employment. Therefore, I conclude that although there were repeated latenesses, there was a absence of warning that continued lateness would result in termination. Therefore, there is no basis for a holding under Section 6 (b) of the Maryland

Unemployment Insurance Law. Pursuant to the Statute: "misconduct not falling within this definition shall not be considered gross misconduct.

DECISION

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 May 17, 1987 and the seven weeks immediately following.

The determination of the Claims Examiner is reversed.


Robin L. Brodinsky
HEARING EXAMINER

DATE OF HEARING - 7/13/87
cd
3903/Philips

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Claimant
Employer
Unemployment Insurance - Glen Burnie - (MABS)

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