

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:	615-BR-89
	Date:	July 21, 1989
Claimant:	Appeal No:	8905393
	S. S. No.:	
Employer:	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 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 20, 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 of this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board adopts the findings of fact of the Hearing Examiner. Based upon these facts, the Board concludes that the claimant's conduct rose to the level of gross misconduct as defined in Section 6(b) of the Maryland Unemployment Insurance Law.

The claimant did not show up for work nor call in for three consecutive work days. There is no indication that he was so seriously ill that he could not call the employer during all of this time. This conduct demonstrates a willful and deliberate disregard of standards which an employer has the right to expect, showing a gross indifference to the employer's interest.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law: He is disqualified from receiving benefits from the week beginning February 19, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his-own.

The decision of the Hearing Examiner is reversed.

DW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Theodore S. Litwin, Esq.

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**
**Department of Economic &
Employment Development**

William Donald Schafer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

- DECISION -

Claimant: Ronald Rhodes
Date: Mailed: 5/30/89
Appeal No.: 8905393
S.S. No.:
Employer: Mullan Enterprises, Inc. L.O. No.: 1
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 TO PETITION FOR REVIEW -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 June 14, 1989
THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

- APPEARANCES -

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Cliff Johnson,
Manager
Theodore S. Litwin,
Esquire/ADP

FINDINGS OF FACT

The claimant began employment July 7, 1988 and performed duties as a Cashier. He last worked at this employment on February 1989. He was separated from this position through discharge.

The record shows that the claimant had some attendance problems but that the employer attempted to work with the claimant in order to preserve his employment. On December 14, 1988, the claimant had received a written warning concerning a failure to punch-in on schedule. The claimant was on probation at the time

of hire, although he did not notify his employer of this situation. When the claimant needed to visit a probation officer, he was given permission to do so on company time. On another occasion he was allowed to leave early to take care of a problem involving his child.

The claimant was scheduled to work on Friday, February 24, 1989, but did not call or report for duty. The claimant was not heard from again by the employer until the following Tuesday (February 28, 1989) at which time the claimant called the employer during his shift from the Veterans Administration Hospital to which he had been admitted on that Tuesday. Earlier that day, the claimant had been discharged from the employment by the employer because of failure to show or call in for five calendar days.

The record shows that the claimant had been taken ill earlier Friday, February 24, 1989 and had gone home suffering from gastritis. The gastritis was ostensibly brought on by the claimant's drinking of alcohol and the claimant was subsequently admitted to the VA Hospital for alcoholism treatment.

CONCLUSIONS OF LAW

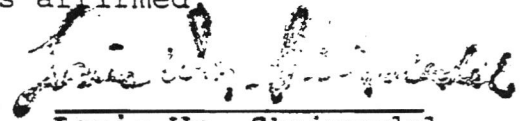
It has been held that as a condition of employment, an employer has the right to expect his workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detention or emergency, to receive prompt notification thereof. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). Failure to meet this standard amounts to misconduct.

In the instant case, the evidence is sufficient to support the determination of the Claims Examiner that the claimant was discharged for reasons of misconduct. The employer urges on appeal that the claimant was, in fact, discharged for reasons of gross misconduct, within the meaning of Section 6(b). The standard for Section 6(b) is that a claimant must be discharged from employment because of behavior which demonstrates a willful and deliberate disregard of standards which the employer has the right to expect, or a series of violation of employment rules which demonstrate and regular and wanton disregard of the claimants obligations to the employer. In the instant case, while the claimant may not be offered as a model employee regarding dependability of appearance and promptness, at the same time his actions do not rise to the level of gross misconduct within the meaning of Section 6(b). In the separation incident, the evidence is uncontraverted that the claimant did have a serious illness and was subsequently admitted to the hospital for continuing treatment.

DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of unemployment insurance benefits from the week beginning February 19, 1989 and for the nine weeks following ending April 29, 1989.

The determination of the Claims Examiner is affirmed



Louis Wm. Steinwedel
Deputy Hearing
Examiner

Date of Hearing: May 24, 1989
lr/Specialist ID: 01062/4500
Copies mailed on May 30, 1989 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

Theodore S. Litwin