



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 62-BR-86

Date: January 20, 1986

Claimant: Sheila Leonard

Appeal No.: 8505490

S. S. No.:

Employer: St. Agnes Hospital
ATTN: Gene Bromell, Emp. Spec.

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 Section 6(b) or Section 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

February 19, 1986.

— 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 agrees with the Hearing Examiner that the burden is on the employer in a misconduct case to show that the misconduct occurred.

The Board also agrees that a violation of an employer's absenteeism policy is not misconduct per se where that policy does not distinguish between absences which occurred because of legitimate medical reasons and absences for which there was no reasonable excuse. Randall v. Nationwide Mutual Life Insurance Company (1641-BR-82).

Where an employee has been absent for a day of scheduled work, however, the burden does shift to the employee to explain the reason for the absence. This type of case always presents a problem in an unemployment insurance appeal, since neither side has a history of documenting the reason for the absence (since, under the employer's policy, the reason is irrelevant). The claimant provided evidence that she had appointments with a doctor on the dates of at least seven of her absences: 5/23, 6/6, 6/15, 6/22, 7/12 and 8/14. She did not provide evidence that she needed to miss an entire day of work on any of these days. In addition, the claimant was absent on additional days, including 11/27/84 and 1/16/85, for which she did not have any reasonable excuse.

Considering the claimant's long history of absences, the fact that her medical appointments were not shown to have required that she miss the whole day from work, the fact that she missed additional days without reasonable excuses and the fact that she was repeatedly warned over a long period of time that she was excessively absent, the Board concludes that her conduct was a series of repeated violations of work rules, showing a gross disregard of her employer's interest. This is gross misconduct, connected with the work, within the meaning of section 6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with the 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 13, 1985 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$117.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Raymond V. Warner

Associate Member

K:W

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Jerald Oppel, Esquire

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

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Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed: June 10, 1985

Claimant: Sheila Leonard

Appeal No.: 05490

S. S. No.:

Employer: St. Agnes Hospital

L.O. No.: 1

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct connected with her 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 June 25, 1985

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Sheila Leonard - Claimant

Gene Bromell - Employment Specialist

FINDINGS OF FACT

The claimant was employed by St. Agnes Hospital as a nursing assistant. She worked there from March of 1981 until January 17, 1985. She was earning \$6.61 per hour at the time of separation from employment. The claimant was discharged because she had missed a very great deal of time. Most of the time missed by the claimant was due to various medical problems. The employer

operates a system whereby it does not distinguish absences by their cause, that is, it does not treat medical absences different from any other absences. Its definition of absenteeism is any absence excluding vacations, holidays, leave of absence, bereavement leave, jury duty and military leave. It includes sick time, even when sent off duty by Employee Health Service or the Emergency Department for reasons of personal illness or hospitalized. for reasons of personal illness.

The employer is unable to present any clear evidence of the claimant having missed work for other than medical reasons.

CONCLUSIONS OF LAW

The burden of establishing that the claimant was discharged for misconduct is upon the employer. The employer, by reason of the particular kind of absenteeism program that it operates, is not in a position to furnish this kind of evidence, and has not met the burden of proving that the claimants absences were for reasons other than valid medical excuse.

The claimant is, therefore, not disqualified from receiving unemployment insurance benefits by reason of her absences in this case.

DECISION

The claimant was discharged, but not for misconduct connected with her work, within the meaning of Section 6(c) or Section 6(b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the claimant's separation from employment with St. Agnes Hospital.

The determination of the Claims Examiner is reversed.



Martin A. Ferris
Appeals Referee

Date of hearing: 6/5/85

amp

(Chappell)

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Copies mailed on June 10, 1985 to:

Claimant

Employer

Unemployment insurance - Baltimore