Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

— DECISION —

Decision No.: 630-BH-89

Date: July 26, 1989

Claimant: John E. Hilliard

Appeal No.: 8705611

S. S. No.:

Employer: Town of Glenarden

L. O. No.: 7

Appellant: EMPLOYER

Issue: Whether the claimant has made a false statement or representation knowing it to be false or has knowingly failed to disclose a material fact in order to obtain or increase any benefit or other payment within the meaning of Section 17(e) 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, IF YOU RESIDE IN 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 August 25, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Claimant Not Present

FOR THE EMPLOYER:

Samuel Botts - Attorney
Norton Bonaparte Town Manager
Clyde Walker - Police Sgt.

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

PRELIMINARY STATEMENT

This matter comes before the Board of Appeals pursuant to an order of court in the Circuit Court for Prince George's County remanding this case to the Board. This matter was remanded for the purposes of determining whether or not the complainant, Mr. John E. Hilliard, committed fraud upon the Board of Appeals during the June 29, 1987 hearing.

Pursuant to the Order of the Circuit Court of Prince George's County, a hearing was held on March 14, 1989, before the board of Appeals. The claimant did not appear to present any additional evidence or argument. On behalf of the employer, Sgt. Clyde Walker of the Police Department of the town of Glenarden presented additional testimony.

FINDINGS OF FACT

The claimant's criminal history shows that he was arrested in Boston, Massachusetts on two occasions. On July 17, 1969 he was arrested and charged with assault and battery with a deadly weapon, and on August 7, 1969 he was arrested and charged with daytime breaking and entering of a dwelling. Both of these charges are felonies in the state of Massachusetts. The claimant was convicted of both charges and served six months in the Massachusetts House of Correction.

The claimant failed to reveal to the employer his prior criminal record at the time of his employment.

On June 29, 1987 a hearing was held before Hearing Examiner J. Martin Whitman regarding unemployment benefits. The claimant testified, under oath, and stated that he was accused of a breaking and entry in the daytime in the state of Massachusetts, and that it was only an accusal.

CONCLUSIONS OF LAW

Based on the record of this case and additional evidence presented before the Board today, the Board concludes that the claimant, John E. Hilliard, did in fact make a false statement on June 29, 1987 before the Board.

Section 17(e) of the Maryland Unemployment Insurance Law finds that when a person is found to have made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact in order to obtain or increase any benefit or other payment under this article, he shall repay the fund the sum equaled to all the benefits received by or paid to him for each week with respect to which the false statement or representation was made or with respect to which he failed to disclose a material fact.

Whether the claimant deliberately failed to disclose a material fact in order to obtain benefits, within the meaning of Section 17(e) of the law, is a question of intent. Bogan v. O D S Home Remodelers, 155-BH-82. Claimant's testimony at the hearing before the Hearing Examiner clearly establishes his intent to make a false statement for the purposes of receiving unemployment insurance benefits.

DECISION

The claimant made a false statement or representation, knowing it to be false and knowingly failed to disclose a material fact to obtain or increase his benefits under this article. The claimant shall repay the fund a sum equal to all the benefits received by or paid to him for each week with respect to which the false statement or representation was made or with respect to which he failed to disclose a material fact, pursuant to Section 17(e) of the Maryland Unemployment Insurance Law.

The claimant is also disqualified from the receipt of benefits from July 11, 1989 through July 10, 1990, under Section 17(e) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is reversed.

Donna P. Watts
Associate Member

Joseph A. Wenk
Associate Member

Thomas W. Keech
Chairman

D:H:K
kmb
DATE OF HEARING: March 14, 1989
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Samuel Botts, Esquire

Isaac H. Marks, Esquire

UNEMPLOYMENT INSURANCE - COLLEGE PARK

DEPARTMENT OF EMPLOYMENT AND TRAINING
STATE OF MARYLAND
1100 NORTH EUTAW STREET
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STATE OF MARYLAND
William Donald Schaefer
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed July 23, 1987

Claimant: John E. Hillard

Appeal No.: 8705611

S. S. No.:

Employer: Town of Glenarden

L.O. No.: 7

Appellant: Employer

Issue: Whether the Claimant was suspended or discharged for misconduct, or gross misconduct, within the meaning of Section 6(b) or 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 WAY SE FILED AT 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 7, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Clyde Walker, Sergeant of Police

FINDINGS OF FACT

The Claimant worked from November of 1986 until he was suspended from work on March 5, 1987 as a police officer for the Town of Glenarden. He was told he was being suspended for a violation of policy. He was also told specifically on March 5 in a meeting with the police commissioner that the educational requirements that he placed on his application

and resume for employment were false and forgeries. The Claimant had placed on his application that he had a high school equivalency certification from the Commonwealth of Massachusetts. The Claimant produces a copy of the high school equivalency showing that he did, in fact, receive a high school equivalency certificate from that Commonwealth. The employer had inquired of the Department of Education of the Commonwealth of Massachusetts, and it was told that the Claimant did not receive the high school equivalency certificate. The employer never recontacted the Department of Education of the Commonwealth of Massachusetts to determine whether or not that certificate was, in fact, false or a forgery as the employer maintains. It has no further documentation to substantiate its position that it was, in fact, a forgery. As a matter of fact, the Claimant maintains that the reason that he was fired was on the application for employment as a police officer for the Town of Glenarden, it says that you must have a high school equivalence certificate or similar certificate or high school diploma by the time you are enrolled in the police academy. The Claimant was never enrolled in the police academy. He states that to make sure that he fulfilled the employer's requirements, he went to the District of Columbia in February of 1987 and received a high school equivalency certificate after taking an examination from the District of Columbia and presented it to the employer. The employer's representative is not certain the actual wording that was on the Claimant's application for employment when it questioned his educational requirement. He has no copy of that questionnaire.

There was a conversation between the Claimant and Superintendent of Police on March 5, 1987 about the Claimant's failure to have the necessary educational requirements, and the Claimant was placed on suspension pending discharge. He then submitted a letter of resignation on March 1997 resigning because he was on suspension pending discharge.

EVALUATION OF THE EVIDENCE

Sergeant Walker of the Town of Glenarden police has no direct knowledge of the information and facts concerning the Claimant's application for employment nor of the conversations with the employer and the Claimant about his suspension and ultimate submission of a letter of resignation. In fact, the only knowledge the Sergeant of Police has is records kept in the normal course of business of the Town of Glenarden. Unfortunately, the Police Commissioner who had conversations with the Claimant about his employment, suspension, and subsequent resignation, is not present at the appeal hearing.

CONCLUSIONS OF LAW

The burden is on the employer in gross misconduct cases to prove that the Claimant was discharged for gross misconduct or misconduct connected with the work. In this case, the employer fails in its endeavor to so prove its allegation. It alleges through a Police Sergeant that the Claimant was discharged because he did not have educational requirements, but the employer produces conflicting documentation which is the sole basis for its appeal. The Claimant swears and proves through documentation that he did, in fact, have a high school equivalency from both the Commonwealth of Massachusetts and later, before his suspension and subsequent resignation, from the District of Columbia. Why these were not acceptable to the employer is questionable. There is from the employer a letter from the Department of Education of the Commonwealth of Massachusetts which indicates that It has no record of the high school equivalency certificate that the Claimant produces. Thus , the certificate produced by the Claimant from Massachusetts is questionable. However, the Claimant does not produce evidence to show that it was, in fact, a forgery or that it is anything but questionable. The employer does not explain why it did not accept the certificate from or letter from the District of Columbia proving that the Claimant passed his high school equivalency. It also does not produce and has no knowledge of the specifics of an application for employment which allows "the Claimant time to produce such educational requirements provided he does so before entering the police academy. The Claimant never entered the police academy. Thus, the Claimant had the opportunity, according to the Claimant's testimony of producing the documentation of educational requirements up until the date that he entered the police academy. It is clear from the Claimant's testimony he did produce at least the District of Columbia documentation and, hence, met the employer's requirements.

The employer has failed to show that the Claimant was discharged for either misconduct or gross misconduct and, hence, the Claimant cannot be denied benefits under Section 6(c) of 6(b) of the Law.

The employer's position is that the Claimant resigned in lieu of discharge and, hence, he quit his job. The Board of Appeals has held that a Claimant who resigns in lieu of discharge does not show the prerequisite intent to voluntarily quit under the Allen v. Core Target City Youth Program case, 275-MD.69, 338 A.2D 237 (1975). Therefore, the Board of Appeals has held that a resignation in lieu of discharge must be treated as a termination under Section 6(b) or Section 6(c) of the Law and that Section 6(a) is clearly

not applicable. See Miller v. Wiliam T. Burnett and Company, Inc., 442-BR-82; see also Tressler v. Anchor Motor Freight, 105-BR-83, and Lee v. the Savings Bank of Baltimore, 468-BR-84. Thus, for all of these reasons, the Claimant is not denied benefits under Section 6 of the Law.

DECISION

The Claimant was discharged from employment, but not for misconduct nor for gross misconduct connected with his work, within the meaning of Section 6 of the Maryland Unemployment Insurance Law. He clearly did not voluntarily separate from employment as required under Section 6(a) of the Law. There is no denial of benefits.

The appeal of the employer fails.

The determination of the College Park Unemployment Insurance Administration Office is affirmed, and the Claimant should consult his local office with regard to all of the other eligibility factors of the Law.

J. Martin Whitman

J. Martin Whitman
Hearing Examiner

Date of Hearing: 6/29/87
Cassette: 3445, 3777 (Scitti)
Copies Mailed on July 23, 1987 to:
Claimant
Employer
Unemployment Insurance - College Park (MABS)