

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.: 649-BH-88
Date: July 29, 1988
Claimant: Jimmy Kinion
Appeal No.: 8800274
S. S. No.:
Employer: Div. of Parole & Probation
L. O. No.: 7
Appellant: CLAIMANT

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; whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law; and whether the claimant was able, available and actively seeking work within the meaning of Section 4(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 28, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Jimmy Kinion, Claimant

FOR THE EMPLOYER:

John Renehan, Field
Supervisor;
T.F.C. Dofflemyer,
Witness

EVALUATION OF 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.

FINDINGS OF FACT

The claimant was employed as a probation officer. As a result of the claimant's behavior on the evening of September 13, 1987, disciplinary action was brought against the claimant by his employer. As part of the disposition of that matter, " the claimant agreed to take a leave of absence without pay for personal reasons. The claimant returned to work with this employer after his leave of absence.

CONCLUSIONS OF LAW

The Board has held that a leave of absence is not a voluntary quit. The term "leaving work" refers only to an actual severance of the employment relationship and does not encompass a temporary interruption in the performance of services caused by a leave of absence. Muller v. Board of Education, 144-BH-83.

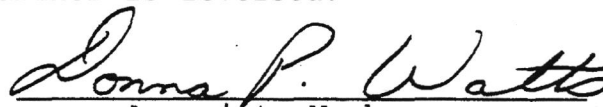
The claimant's leave of absence did not sever his employment relationship, notwithstanding the fact that his job was not guaranteed. Savage v. Church Hospital, 1067-BH-83.


The Board has also held that a claimant who voluntarily removes himself from the work force for a substantial period of time, pursuant to a leave of absence granted at his request, is not "available for work" within the meaning of Section 4(c) of the law. Wallnofer V. Transit and Traffic, 459-BH-84.

DECISION

The claimant was on a voluntary leave of absence, during which time he was not available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. The claimant is therefore disqualified from receiving benefits from the week beginning September 27, 1987 and until he meets the requirements under this section of the law. (In this case the claimant was not available for work any time prior to his reinstatement with the Division of Parole and Probation.)

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

DW:W

kbm

Date of Hearing: July 12, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Div. of Parole & Probation

UNEMPLOYMENT INSURANCE - COLLEGE PARK

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schafer
Governor

- DECISION -

Date: Mailed: 2/24/88
Claimant: Appeal No
Jimmy R. Kinion S. S. No.: 8800274-EP
Employer: L.O. No.:
Division of Parole & Probation Appellant: 7
Employer
Issued:

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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON 3/10/88
NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

--- APPEARANCES ---

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

John C. Reneham,
Field Supervisor II
Dorothy Ransom,
Assistant Chief of
UI Unit

FINDINGS OF FACT

The claimant has been employed for the past years with the Division of Parole and Probation. At the time of his separation from the employment on September 30, 1987, the claimant was a senior Parole and Probation Agent earning \$28,116 per year.

On Sunday, September 13, 1987, the claimant was stopped for driving 45 miles an hour in a 35 mile an hour zone. The claimant

refused to take a breathalyzer test and subsequent license for a period of sixty days. He claimed and received probation because of his traffic violation which occurred during off duty hours.

Because the claimant is a parole and probation agent, he is employed by the State of Maryland. Pursuant to a plea agreement, the claimant is presently on a leave without pay status from the Division of Parole and Probation. This six month period of leave without pay began on December 1987 and will run until the end of May 1988.

The claimant is not unemployed.

CONCLUSIONS OF LAW

Section 6(b) of the Maryland Unemployment Insurance Act provides for the denial of benefits - unemployment when it is determined that the individual was discharged for misconduct connected with his work. Gross misconduct is defined in the Act as a deliberate and willful disregard of the standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded his obligations. A lesser disqualification is imposed when an individual is discharged for misconduct connected with his work. Misconduct means a substantial deviation from the proper standard of conduct. Both terms, gross misconduct and misconduct, connote the element of deliberate or willful wrongdoing.

Certain employees have a continuing duty to their employers to refrain from committing statutory violations which show moral turpitude. The claimant's duties as a Senior Parole and Probation Agent require him to maintain a standard of conduct off duty that is higher than the average person. The chain of events which led to the claimant's separation from the employment was started by the claimant when he failed to take a breathalyzer test after being stopped for speeding. Under these circumstances, it is concluded that the claimant's conduct after being stopped for speeding demonstrates his disregard of the employer's standards of behavior. Therefore, the determination of the Claims Examiner will be reversed.

DECISION

The claimant was suspended for gross misconduct connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning September 27, 1987 and until the claimant becomes re-employed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Seth Clark
Hearing Examiner

Date of hearing: 2/2/88

rc

(567)-Specialist ID: 07205

Copies mailed on 2/24/88 to:

Claimant
Employer
Unemployment Insurance - College Park - MABS

Division of Parole and Probation