



Maryland

Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	654 -BH-91
	Date:	May 31, 1991
Claimant:	Deloris Gilbert	Appeal No.: 9100763
		S. S. No.:
Employer:	Mass Transit Administration	L.O. No.: 45
		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 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, 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 June 30, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Deloris Gilbert - Claimant

FOR THE EMPLOYER:

Eugene Hyatt -
Sergeant

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 by the Mass Transit Administration from September 16, 1989 until July 12, 1990. The claimant was employed in the position of a part-time security guard.

On July 13, 1990 members of the Baltimore City Sheriff's department came to the claimant's home looking for a friend of the claimant. This individual was wanted for non-payment of child support. The individual the sheriffs were looking for was not at the claimant's home at the time. The sheriffs conducted a search of the claimant's home without her permission. During the course of this search, the sheriffs began to harass the claimant's son. At that time the claimant demanded that the sheriffs leave her home, and they did.

Later that day, on the street in front of her house, the claimant was getting into her car. At that moment, the individual that the sheriffs had been looking for earlier in the day, was coming down the street. The sheriffs arrested this individual. The sheriff's department alleged that during the course of the arrest the claimant interfered with the performance of their duties. The sheriff's department, therefore arrested the claimant also. The claimant was held at the police station for three hours.

The claimant was due to report to work on the evening of July 13th at 6:00 p.m. She did not report due to having been arrested. She did, however, call her employer and told them that she would not be coming in to work that day, giving personal reasons as an excuse. The claimant did not tell her employer that she had been arrested. However, the sheriff's department had notified the employer of her arrest.

The claimant was discharged from her employment due to her failure to inform her employer that she had been arrested. The employer's Standard Operating Procedure, a section of which is marked Employer's Exhibit B-2, required that any members of the police force report to the employer immediately if they are arrested. The claimant was discharged by her employer pursuant to this section of their Standard Operating Procedure.

At the time of her employment as a security guard, the claimant was given a large quantity of materials to read. The Standard Operating Procedure of the MTA was included in the reading materials given the claimant. The claimant testified, and the Board finds as a fact that her beliefs were reasonable that the rules and regulations regarding the police force did not apply to her. The claimant was not employed as a member of the police force, she had not attended the police academy and she was not paid the rate of pay of a police officer. The claimant's belief that she did not have to report her arrest immediately to her employer was reasonable.

The claimant was eventually acquitted of all charges resulting from her arrest on July 13, 1990.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) of the Maryland Unemployment Insurance Law provides that an individual shall be disqualified from the receipt of benefits if his unemployment is due to gross misconduct. Gross misconduct is conduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which the employer has a right to expect, showing a gross indifference to the employer's interests or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations. Section 6(c) of the law provides for a lesser penalty for termination from work due to misconduct, connected with the work.

In a case of termination, the burden is on the employer to show that the claimant has either committed acts which amount to gross misconduct as defined in Section 6(b) of the law or misconduct as defined in Section 6(c). In this case the employer has failed to meet its burden. The claimant has been acquitted of all charges stemming from her arrest on July 13, 1990. The Board has also concluded based on the facts presented in this case that the claimant's belief that she was not required to inform her employer immediately of her arrest was reasonable and therefore her failure to do so does not amount to gross misconduct or misconduct within the meaning of the Maryland Unemployment Insurance Law.


DECISION

The claimant was discharged, but not for gross misconduct or misconduct, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with the Mass Transit Administration.


The decision of the Hearing Examiner is affirmed.



Associate Member



Associate Member



Chairman

kmb

DATE OF HEARING: April 23, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street
Baltimore, Maryland 21201*

Telephone: 333-5040

— DECISION —

	Date:	Mailed: 2/8/91
Claimant: Deloris Gilbert	Appeal No.:	9100763
	S. S. No.:	
Employer: Mass Transit Administration	L.O. No.:	045
	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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 February 25, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Deloris Gilbert - Present

FOR THE EMPLOYER:

Eugene Hyatt, Police Sergeant

FINDINGS OF FACT

The claimant was employed by the Mass Transit Administration on November 16, 1989. At the time of her separation from employment on July 12, 1990, she earned \$6.20 an hour as a part-time Security Guard.

On July 13, 1990, the claimant was arrested by a Baltimore City Sheriff for interfering with an arrest. A Baltimore City Sheriff entered the claimant's house looking for a friend of the claimant's who was wanted for non-payment of child support. The Sheriff searched the claimant's house without the claimant's permission and without a warrant. The Sheriff also began to harass the claimant's son. The claimant asked the Sheriff to leave but he refused. The claimant was arrested after using a profanity and demanding that the Sheriff leave her house. The claimant was held at the police station for three hours. This incident did not occur while the claimant was on duty or on the employer's premises.

The claimant was due to report to work at 6:00 p.m. that evening. She notified her employer that she would not report for work for personal reasons because she was too upset to report after the incident that occurred earlier in the day. The Sheriff's Department notified the employer of her arrest. The employer's rules provide that Mass Transit Administration Police Officers can be discharged for conduct which is unbecoming to a police officer. The employer's rules also provide that any police officer who has been arrested must report the arrest to the employer. The claimant was not a police officer but a security guard. She was not aware that security guards were subject to the same policies as police officers. This is the reason the claimant did not report her arrest. She believed that the arrest was personal and she was not required to report it to her employer. The claimant was discharged for "conduct unbecoming of a police officer and failure to report her arrest."

CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. Conduct leading to a discharge from employment for gross misconduct or misconduct must have been connected with the claimant's employment. In this case, the claimant was discharged for an incident which occurred while she was off duty and off the employer's premises. Further, the facts indicate that the claimant probably was not at fault in the event that led up to her arrest. In addition, the claimant was not aware that the rule which required that she report the arrest to her employer applied to her because she was classified as a Security Guard and thought that the rules applied to police officers. The employer

in this case, has failed to provide sufficient evidence to support a finding that the claimant was discharged for either gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Law.

DECISION

The claimant was discharged for conduct that does not constitute misconduct or gross misconduct connected with her work within the meaning of Section 6(b) or 6(c) of the Law. Benefits are allowed.

The determination of the Claims Examiner is hereby affirmed.



Sarah Moreland
Hearing Examiner

Date of Hearing: February 6, 1991
km/Specialist ID: 45557
Cassette No: 1120
Copies mailed on February 8, 1991 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)