

# 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.:	661-BR-88
	Date:	August 4, 1988
Claimant:	Appeal No.:	8804378
	S.S. No.:	
Employer:	L. O. No.:	12
	Appellant:	EMPLOYER

**Issue:**

Whether the appealing party filed a late appeal, without good cause, within the meaning of Section 7(c)(3) of the law; 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 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.

September 3, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRE SAT MIDNIGHT ON

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses in part and affirms in part the decision of the Hearing Examiner. The ultimate decision that the claimant is

not disqualified from receiving unemployment insurance benefits is affirmed.

The Board reverses the conclusions that the employer filed an untimely appeal within the meaning of Section 7(c)(3). The employer has submitted to the Board, with its letter of appeal, a copy of the Notice of Benefit Determination (DET/UIA 222) it received from the Department of Economic and Employment Development ("Agency") which clearly states that the last date to file an appeal is April 21, 1988. The Board will accept this evidence and, accordingly, concludes that since the employer's appeal was postmarked April 21, 1988, the appeal was timely. See, COMAR 24.02.06.01B(1) (b).

However, the Board concludes that the claimant was discharged for reasons that do not justify a disqualification under Section 6(b) or 6(c) of the law. Since the Hearing Examiner did not make findings of fact or conclusions of law on this issue, the Board will make its own findings and conclusions.

#### FINDINGS OF FACT

The claimant was employed by Grossman's, Inc. from April 16, 1987 until she was discharged on or about March 15, 1988. She was originally hired as a cashier but, due to seasonal changes in the business, was performing garden and stock (warehouse) duties at the time of her discharge.

The employer began receiving complaints from fellow workers about the claimant's attitude and work habits. The claimant was given a warning on March 10, 1988 and placed on 90-day probation at that time. The evidence on this is rather vague other than a general statement that she complained a lot and only did what she was told and sometimes she didn't complete her work correctly.

On March 15, 1988, the claimant's supervisor, who had only been her supervisor for approximately two days, told her to go to the warehouse, get a skid of fans from the floor and pile them up on a display at the front of the store. The claimant did not refuse to do this. However, when she got to the warehouse, she found she was unable to lift the fans due to the fact that they were jammed together and because she had a bad shoulder. She asked someone in the warehouse to help her and he did so. However, when her supervisor saw that someone else was doing the lifting for the claimant, he became angry and fired her. The claimant had not previously told the employer about her shoulder problem.

## CONCLUSIONS OF LAW

In a case where the claimant has been discharged, the employer has the burden of proof with regard to showing the discharge was for misconduct. Hartman v: Polystyrene Products Co., Inc., 164-BH-83. The employer has failed to meet that burden here.

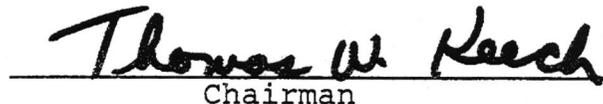
The description of the claimant's poor "attitude" that lead to her warning is vague and primarily shows that she was not liked by her fellow employees and that she was not an exemplary employee. This is not misconduct under the unemployment insurance law. The final incident fails to show any acts of misconduct either. The claimant did not refuse to perform an assignment, as alleged by the employer; she merely asked for assistance from someone and in fact got that assistance. While it may have appeared to the employer that she was shirking her responsibilities, especially in view of the past complaints about her, the Board finds that the claimant was trying to perform her duties. She didn't just refuse to do the job; she sought help. The Board fails to see any misconduct in that. Although the claimant probably should have told her employer of her shoulder problems earlier, the Board does not find that oversight to be misconduct under the facts of this case.

## DECISION

The employer did not file a late appeal, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law. The decision of the Hearing Examiner with regard to that issue is reversed.

The claimant was discharged, but not for any misconduct, connected with her work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The decision of the Hearing-Examiner is affirmed..

  
Associate Member

  
Chairman

HW:K  
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

More's

UNEMPLOYMENT INSURANCE - SALISBURY

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

STATE OF MARYLAND  
William Donald Schaefer  
Governor

- DECISION -

Claimant: Eleanore E. Duncan  
Date: Mailed June 9, 1988  
Appeal No.: 8804378  
S.S. No.:  
Employer: Grossman's, Inc.  
L.O. No.: 12  
Appellant: Employer

Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law. Whether the Claimant was discharged for misconduct connected with his work within the meaning of Section 6(c) of the Law. Whether the appeal of the employer was late, without good cause, under Section 7(c)(3) 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

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON June 24 1988  
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:  
Present

FOR THE EMPLOYER:  
Phil Galloway;  
Robert Wallace,  
Gates, McDonald

FINDINGS OF FACT

The Claimant was allowed benefits by a determination of the Claims Examiner, which showed on its face that the last day for filing an appeal was April 19, 1988. The employer filed an appeal, but filed it late. The employer's appeal was received in the local office on April 25, 1988, but had been placed in the mail in Columbus, Ohio on April 21, 1988.

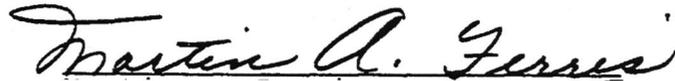
The employer's witnesses offered no explanation for why the appeal was late.

#### CONCLUSIONS OF LAW

Jurisdiction of a Hearings Examiner to make a determination reversing a finding of the Claims Examiner or affirming it is based entirely upon Statutory authority. Where appellate jurisdiction is based on Statutory authority, the Statute must be fully met or jurisdiction is lacking. The employer in this case did not meet the requirements of the Statute, in that it did not file a timely appeal, and the Hearing Examiner, therefore, is deprived of jurisdiction to consider this case on the merits. The result is that the determination of the Claims Examiner allowing the Claimant benefits must stand.

#### DECISION

The employer filed a late appeal, without good cause, within the meaning of Section 7(c)(3) of the Law. The determination of the Claims Examiner allowing the Claimant benefits must remain unchanged.



Martin A. Ferris  
Hearing Examiner

Date of Hearing: May 18, 1988

Cassette: 2923

Specialist ID: 12619

Copies Mailed on June 9, 1988 to:

Claimant

Employer

Unemployment Insurance - Salisbury (MABS)

More's