



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

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Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND

HARRY HUGHES
Governor

— DECISION —

Claimant: Robert F. Noble

Employer: The Bees Distributing
Company, Inc.

ATTN: Dennis Broderick

Issue: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the law.

Decision No.: 672-BR-85
Date: August 28, 1985
Appeal No.: 11064
S. S. No.:
L.O. No.: 9
Appellant: EMPLOYER

— 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON September 27, 1985

— 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. Since the claimant did not appear to testify at this case, the employer's evidence was not contradicted by any testimony under oath from any party. The Hearing Examiner's findings of fact are inadequate, and the Board will make the following findings of fact.

The claimant was employed from 1969 until August 21, 1984 for the Bees Distributing Company, Inc. In 1980 he had become a brand manager. His salary at that time was \$500.00 per week plus a certain commission.

The claimant's salary arrangement was changed to commission only. This was a management-wide program which also applied to the other three middle managers. When the claimant first complained about this, the arrangement was changed so that the claimant could draw \$550.00 per week against future commissions. This was done in order to insure that periodic decreases in sales would not substantially affect his salary at that time. The salary change was such that the claimant would make approximately the same amount that he had made if sales continued at that rate. Because 1984 was a slow year, however, the claimant was experiencing approximately a \$2,000 loss in salary.

The claimant complained to management about this new salary arrangement. He also complained about this to all of the employees of the company and to personnel from other companies.

In addition, however, the claimant began to spread false rumors, calculated to hurt morale through the company. He told other company personnel that the younger trainees were all to be laid off. He told middle management personnel that they were being phased out. There was no truth to any of these rumors.

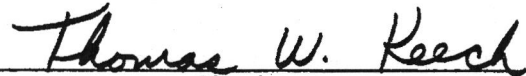
The Board concludes, as did the Hearing Examiner, that the claimant's complaints about his salary to management officials was not any type of misconduct. The claimant had been clearly given a salary cut (at least as it relates to 1984) and he did have every right to complain to management. The claimant's widespread complaints about his own salary arrangements to other company personnel were unjustified, though they may have been somewhat understandable. The claimant was in a management position and clearly knew that the persons to whom he was complaining had no authority to change his salary. The only purpose of such complaints would be to vent his own personal anger at his new circumstances. The anger, of course, was somewhat understandable, and the Board would not find that misconduct in itself would amount to "gross misconduct" as that term is used in §6(b) of the Maryland Unemployment Insurance Law.

The claimant's spreading of false rumors to two other classes of employees, the substance of which rumors was that the company was about to phase out and lay off those classes of employees, was gross misconduct. Since this information was false, the only purpose of spreading such rumors could have been to injure the company and lower morale. Participation in such spreading of false rumors by a management person, in a manner of such serious concern to employees, was a deliberate violation of standards which the employer had a right to expect. It also showed a gross indifference to the employer's interest. This conduct does meet the definition of "gross misconduct" within the meaning of §6(b) of the Maryland Unemployment Insurance Law.


DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning August 19, 1984 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1750.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Douglas Koteen, Esquire
Law Offices of Norman Buschbaum

UNEMPLOYMENT INSURANCE - TOWSON



DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND
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**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Date: Mailed: Dec. 18, 1984

Claimant: Robert F. Noble

Appeal No.: 11064-EP

S. S. No.:

Employer: The Bees Distributing Co., Inc.

L.O. No.: 9

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with this 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 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 **January 2, 1985**

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Dennis Broderick -
Vice-President, Charles
R. Broderick, Jr. -
President and Wellener
Lowe - Sales Manager
and represented
by Douglas E. Koteen -
Attorney

FINDINGS OF FACT

The claimant has a benefit year effective August 19, 1984. His weekly benefit amount is \$175.00. The claimant was employed by The Bees Distributing Company, Inc. of Finksburg, Maryland on

August 18, 1969. He was performing duties as a brand manager at \$500.00 per week, plus commission at the time of his separation on August 21, 1984.

The testimony reveals that the claimant was promoted to the brand manager under a \$500.00 a week salary, plus commission. In January of 1984, the management decided that all brand managers would now be on a commission basis only. The claimant made complaints regarding this new arrangement, indicating that he felt he would lose money and repeated these feelings and complaints to other employees. The proposal of the company that the managers start being paid on a commission basis only was leaked out of the meeting with management, but there could have been two possible people that; had leaked it out.

The employer also alleges that the claimant started rumors about firing all the managers and several employees came to management indicating their fear of losing their employment. Because the employer felt that the claimant was undermining the morale of the company and was not cooperating with management, he was terminated for insubordination.

The claimant received two letters from his employer indicating their dissatisfaction with his failure to keep personal business to himself.

CONCLUSIONS OF LAW

It is concluded from the testimony that the claimant did not violate any standard of behavior that the employer could expect. The claimant worked for approximately fifteen years on a pay basis of salary, plus commission. During the last seven months, it was the employer who changed the way of paying its employees to commission only. The claimant did have fear of making less money and expressed these fears. It is concluded, therefore, that there was no misconduct on the part of the claimant and that he certainly did not violate any behavior policy by expressing these fears to fellow employees. The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged, but not for misconduct connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification will be

imposed based upon the claimant's separation from his employment with The Bees Distributing Company, Inc. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner under Section 6(c) of the Law is affirmed.

The Employer's Protest is denied.

William R. Merriman
Appeals Referee

Date of hearing: 11/27/84
amp/1805
(Scarboro)
8202, 8203

Copies mailed on December 18, 1984 to:

Claimant
Employer
Unemployment insurance - Towson

Douglas E. Koteen, Esquire