

# 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.:	678-BR-89
	Date:	August 11, 1989
Claimant:	Appeal No.:	8904395
	S. S. No.:	
Employer:	L.O. No.:	9
	Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON September 10, 1989

**— 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 and concludes that the claimant was discharged for gross misconduct within the meaning of Section 6(b) of the law.

The claimant was discharged for having a large number of absences and lateness, most of them due to illness. The employer's own records indicate that sickness was the primary cause of his attendance problems.

The claimant's testimony is that the nature of his illness was alcoholism. It is correct that alcoholism is recognized in Maryland as an illness (H.G. Section 8-102 of the Annotated Code of Maryland). Further it has been held that where chronic absenteeism caused by intoxication is the result of the claimant's "irresistible compulsion to drink," that absenteeism is not disqualifying under the unemployment insurance law. See, Jacobs v. California Unemployment Insurance Appeals Board, 255 Cal. App. 3d 1235 1972); see also, Thornton v. UMAB, 701-BH-85.

In this case, the claimant has not proven, by a preponderance of the evidence, that his attendance problems were due to such an irresistible compulsion. (For examples of cases where the Board found sufficient evidence that the claimant's irresistible compulsion to drink was the cause of his or her misconduct, see, e.g., Johnson v. Union Trust Company of Maryland, 204-BH-85; Houchins v. Southern Label, 309-BH-85. )

Further, the claimant had an excessive number of latenesses and absences, many without notice to his employer and despite repeated warnings. Even where a claimant's absences are largely due to illness, gross misconduct has been found where, as here, the absenteeism is excessive, without notice and in the face of warnings. Watkins v. ESA, 266 Md 223 (1972).

The Board also notes that when the employer finally learned from the claimant that his problem was alcohol, they referred him to their Employee's Assistance Program, where the claimant was referred for treatment to a rehabilitation center. The claimant's attendance problems continued however, even after this treatment and the Board is not convinced, based on the claimant's own testimony (he testified that he is still drinking while attending AA) that he has made a sincere good faith effort to correct his problem and proven that he suffers from an irresistible compulsion that cannot be treated.

Therefore, the decision of the Hearing Examiner is reversed.

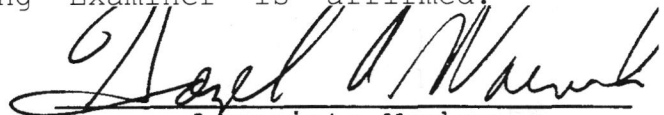
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<sup>1</sup> This is factually distinguishable from a case where the claimant has made every effort but has gone back to drinking due to an irresistible compulsion.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning March 12, 1989 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed.

  
Associate Member

  
Associate Member

H:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

 **Maryland**  
**Department of Economic &  
Employment Development**

Governor  
J. Randall Evans  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201

(301) 333-5040

— DECISION —

Date: Mailed: June 13, 1989

Claimant: Gary E. Lane

Decision No.: 8904395-EP

S.S. No.:

Employee: Bureau of Water & Waste  
Water  
c/o Charlie Spinner

L.O. No.:

9

Appellant:

Employer

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

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— 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

June 28, 1989

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— APPEARANCES —

FOR THE CLAIMANT:

Gary E. Lane - Claimant

FOR THE EMPLOYER:

Richard W. Banks,  
III - Plant  
Operations  
Supervisor -  
Patapsco; Charlie  
Spinner - Unemploy-  
ment Benefits  
Administrator

FINDINGS OF FACT

The claimant was terminated for overall unsatisfactory attendance from his position as Operator/Technician Apprentice for the Bureau of Water and Waste Water. The employer introduced a series

of sixteen exhibits which chronicled the claimant's record of absences including unauthorized absences and times he was late. The claimant does not dispute the attendance history that is outlined in these documents. He is an alcoholic and was suffering the disease of alcoholism during this employment. He now attends Alcoholics Anonymous meetings and is in their step program. His prior treatment consist of one three-day hospital stay.

After seven occurrences, the claimant was referred to the Employee Assistance Program (EAP). He went to EAP on January 10, 1989 and the employer-s records indicate that their action was to "refer back to work for normal supervision." An internal memorandum submitted by the employer dated March 16, 1989 mentions a previous referral to EAP in August, 1988, but the series of events as outlined in the employer's exhibits do not show a prior referral.

The claimant emphasized that his poor attendance record was not a wanton or deliberate act on his part, but rather it was the result of the disease of alcoholism. The claimant was unable to control his drinking, even as he recognized that it was jeopardizing his job.

#### CONCLUSIONS OF LAW

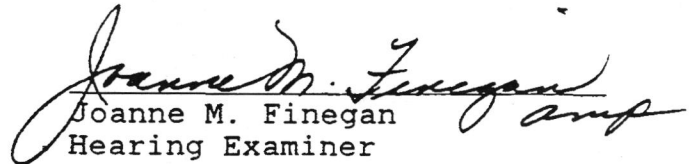
Article 95A, Section 6(c) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

Whether chronic absenteeism caused by intoxication constitutes misconduct depends on whether the claimant's intoxication induced behavior was the product of an irresistible compulsion to drink; if so found, the claimant's behavior would not be disqualifying. See Jacobs v. California Unemployment Insurance Appeals Board, 255 Cal. App. 3d 1035 (1972). It is concluded that during the period of the claimant's absenteeism, he was not able to control his drinking, and therefore, is not disqualifying conduct.

DECISION

It is held that the claimant was discharged, but not for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with the Bureau of Water and Waste Water. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

  
Joanne M. Finegan  
Hearing Examiner

Date of hearing: 5/17/89  
amp/Specialist ID: 09657  
Cassette No. 4136  
Copies mailed on June 13, 1989 to:

Claimant  
Employer  
Unemployment insurance - Towson (MABS)