

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.:	685-BR-89
	Date:	August 15, 1989
Claimant:	Appeal No.:	8809899
	S. S. No.:	
Employer:	L. O. No.:	1
	Appellant:	EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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.

Sept. 14, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

The Board apologizes to the parties for the delay in the issuance of the decision in this case. This delay was caused by the fact that the tape recording of the hearing was temporarily lost.

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Hearing Examiner's conclusions of law are clearly wrong. In this case, the claimant was late numerous times and was counseled for it by her employer. During the counseling, the claimant did not mention any drug problem or seek any help for a drug problem from the employer.

The simple fact that the claimant was late due to "personal" and "drug" problems, and the fact that she sought medical assistance for these problems just prior to being terminated, do not amount to mitigating circumstances for the claimant's latenesses. The Board is so ruling as a matter of law, at least in a case such as this, where the claimant never revealed these problems to the employer during the crucial time period of her employment.

The more important facet of this case is that the claimant was not fired for lateness but for falsification of her lateness records. Concerning this issue, the Board disagrees with the finding of fact made by the Hearing Examiner.

The Board finds as a fact that the claimant did falsify her time sheets. The evidence that she did so is mostly circumstantial and was not presented in a coherent manner by the representatives of the City of Baltimore. Nevertheless, the evidence is sufficient for the Board to rule that the employer has established by a preponderance of the evidence that the claimant did falsify her time sheets.

The employer maintained a white sign-in sheet, with a copy attached. This white sheet was forwarded to a central personnel office from which the paychecks were issued. Only those employees who arrived on time were supposed to sign the white sheet. Signing the white sheet was an indication that the employee had arrived on time.

Another sheet was maintained for those employees who arrived late. This was a pink sheet with a carbon attached. Employees were to sign their actual arrival time on the pink sheet.

The office supervisor kept the carbons of both the pink and white sheets. The original white sheets were sent to the central personnel office. The claimant was often the employee who actually took the original white sheet and put it in the inter-office mail to the central personnel office.

On numerous occasions, the claimant was actually late and signed the pink sheet as being late. Her signature, however, appeared on the originals of the white sheets forwarded to the central personnel office, indicating that she had been on time those same days. The carbon copies of those same white sheets, however, did not show the claimant's signature, indicating that the white original sheet had been signed after the carbon had been removed for the supervisor but before the original white sheet had been sent to the central personnel office.

On one occasion, the claimant was observed by her supervisor signing the white sheet when she was actually thirty minutes late. When questioned at the hearing about her reason for doing this, the claimant's responses were vague and evasive.

The claimant was the only person who had a motive to falsify the time sheets, as the falsification gave only her the advantage of being marked timely in the central personnel records. She had the opportunity to falsify the records, as she handled them and actually mailed them in. Her signature was affixed to them at a time when they were in her control. She was caught in the act of signing herself in on the wrong sheet on one occasion, and she had no reasonable explanation for doing so. From all of this evidence, the Board infers that the claimant did falsify the time sheets sent to the central payroll office.

This was a deliberate violation of standards the employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning June 5, 1988 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$1,900) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Claimant: Cora M. Wilton

Date: Mailed: 11/1/88

Appeal No: 8809899

S.S. No.:

Employer: Dept. of Health

L.O. No.: 1

Appellant: Claimant

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 FURTHER APPEAL ---

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY COURT OR WITH THE APPEALS DIVISION, ROOM 318, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

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11/16/88

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--- APPEARANCES ---

FOR THE CLAIMANT:

Claimant-Present
Rudy Porter,
Sheila Sullivan,
Representatives of City Union
of Baltimore

FOR THE EMPLOYER:

Rosetta T. Rizzo,
Community Health
Nurse Supervisor II
Charles Spinner,
Personnel Technician
Supervisor

FINDINGS OF FACT

The claimant was employed from October 23, 1973 and at the time of separation was an Office Assistant II, in the City's Health Department at a pay rate of \$745.47 bi-weekly for full-time employment. She was terminated effective June 8, 1988 for allegedly falsifying time sheets on more than one occasion and for attendance problems which had resulted in a three days suspension in March 1988.

The claimant did not falsify time sheets. On one occasion when she signed the wrong sheet when she arrived late, she corrected this situation. The claimant was late for work due to personal problems and an on-going problem with drugs. She sought medical help for this problem prior to her separation from employment. When she was late for work it was because of the personal problems and the addiction. A grievance filed concerning the three days suspension and the claimant's appeal of her termination from employment have not been adjudicated and are still pending as of the date of this hearing.

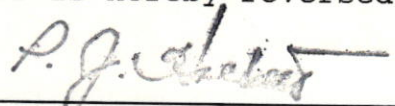
CONCLUSIONS OF LAW

It is held that the claimant was discharged by decision of the employer for reasons which do not constitute gross misconduct or misconduct respectively connected with the work, within the meaning and intent of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. When and if the claimant was late for work, it was due in part to her problem with a drug addiction for which she sought help prior to her termination. No disqualification will be imposed based on her separation from this employment.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from this employment on or about June 8, 1988.

The determination of the Claims Examiner is hereby reversed.



P.J. Hackett
Hearing Examiner

Date of hearing: 10/24/88
rc
(7141-A&B)-Specialist No: 01019
Copies mailed on 11/1/88 to:

Claimant
Employer
Unemployment Insurance - Baltimore - MABS