



STATE OF MARYLAND  
HARRY HUGHES  
Governor

RUTH MASSINGA  
Secretary

# DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: 383-5032

BOARD OF APPEALS  
THOMAS W. KEECH  
Chairman  
HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members  
SEVERN E. LANIER  
Appeals Counsel

## —DECISION—

	DECISION NO.:	696-3R-83
	DATE:	June 3, 1983
CLAIMANT: John R. Evans	APPEAL NO.:	14752
	S.S.NO.:	
EMPLOYER: Potomac Insulation, Inc.	LO. NO.:	7
	APPELLANT:	CLAIMANT

ISSUE Whether the Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; whether the Claimant failed, without good cause, to either apply for or to accept an offer of available, suitable work within the meaning of §6(d) of the Law; and whether the Claimant was able to work and available to work, and actively seeking work within the meaning of §4(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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

July 3, 1983

### —APPEARANCE —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

### REVIEW ON THE RECORD

Upon a review of the entire record in this case, the Board of Appeals affirms in part and reverses in part the decision of the Appeals Referee.

The Board adopts the findings of fact and conclusions of law of the Appeals Referee regarding §6(c) and 6(d) of the Maryland Unemployment Insurance Law.

The Board reverses the decision of the Appeals Referee with regard to §4(c) of the Law. The primary basis for this disqualification is the fact that the Claimant does not possess a driver's license. In Employment Security Administration v. Smith, 282 Md. 267 (1978), the Court of Appeals ruled that the lack of the use of an automobile could not, in and of itself, disqualify a claimant under §4(c) of the Law.

The Board sees no reason why the Smith rationale does not apply to this case. In the Julia Waring case, 847-BH-81, the Board held that the fact that a Claimant cannot perform his or her former job does not necessarily mean that such a Claimant must be disqualified under §4(c). Such a Claimant may yet be available to work within the meaning of §4(c) if the Claimant can perform the duties of a wide range of other jobs.

The Board concludes that the Appeals Referee in this case made findings not justified by the evidence in the case when he stated that the job as insulator required a driver's license. This Claimant's particular job required such a license, but there is insufficient evidence that all such jobs require a license. Also, the Appeals Referee's questioning of the Claimant was much too superficial to establish the fact that the lack of a driver's license makes him substantially unavailable for the types of work he is capable of performing. There is insufficient evidence to overcome the presumption from the Smith case that the lack of a driver's license doesn't automatically show that a person isn't meeting the requirements of §4(c) of the Law.

#### DECISION

The Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the weeks beginning October 17, 1982 and the nine weeks immediately following.

The Claimant did not fail to accept an offer of available, suitable work within the meaning of §6(d) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the Law.

The Claimant was able, and available for work within the meaning of §4(c) of the Maryland Unemployment Insurance Law during the period in question.

The decision of the Appeals Referee is affirmed in part, reversed in part.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation, unless the Claimant has been employed after the date of the disqualification.

*Thomas W. Keech*

Chairman

*Maurice E. Hill*

Associate Member

K:D  
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Neighborhood Legal Services Program

UNEMPLOYMENT INSURANCE - COLLEGE PARK



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BOARD OF APPEALS  
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 Associate Members  
 SEVERN E. LANIER  
 Appeals Counsel  
 MARK R. WOLF  
 Administrative  
 Hearings Examiner

- DECISION -

CLAIMANT: John R. Evans  
 DATE: Dec. 28, 1982  
 APPEAL NO.: 14752  
 S. S. NO.:  
 EMPLOYER: Potomac Insulation, Inc.  
 L. O. NO.: 7  
 APPELLANT: Claimant

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 failed, without good cause, to either apply for or to accept an offer of available, suitable work within the meaning of Section 6(d) 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 12, 1983

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

John R. Evans - Claimant

Not Represented

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective October 31, 1982. His weekly benefit amount is \$153.00. He was employed from 1980 until October 22, 1982 by Potomac Insulation, Inc. as an insulator at \$140.00 per week for a basic thirty-seven and a half hour work week.

The claimant had been verbally warned about being late, Consequently, when he was late again, he was discharged. He was unable to request his old job back or accept any offer in the capacity of an insulator, as he had lost his license, after being convicted for drunk driving. His license will be reviewed after six months.

#### CONCLUSIONS OF LAW

It is held that the claimant's actions of being late, after being warned once verbally, constitutes misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner on this issue will be reversed.

It is further held that the reason that the claimant failed to accept available, suitable employment within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law is because he was unable to drive. In the final analysis, the claimant was unable to perform the duties of driving because he had lost his license due to being convicted of drunk driving. The issue is then one of ableness and not the intent to fail to accept. The determination of the Claims Examiner that the claimant intended to decline the offer of work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law will be reversed. However, the claimant is unable to drive, a necessary requisite of being an insulator, for an insulating firm, and therefore, he is unable within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law.

#### DECISION

It is held that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning October 17, 1982 and the nine weeks immediately following.

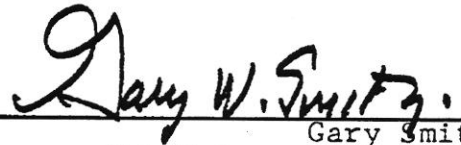
The determination of the Claims Examiner that the claimant's actions constitute gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law is reversed. The disqualification imposed for the week beginning October 17, 1982 and until such time as the claimant becomes re-employed, earns at least ten times his weekly benefit amount (\$1,530.00) and thereafter becomes unemployed through no fault of his own is rescinded.

The determination of the Claims Examiner that the claimant failed to accept, without good cause, available, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law is reversed. The disqualification imposed for the

week beginning November 14, 1982 and until such time as he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,530.00) and thereafter becomes unemployed through no fault of his own is rescinded.

It is further held that the claimant is unable to perform the duties of an insulator, and therefore, is not able and available for work simultaneously within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from November 14, 1982 and until the date of the hearing, December 13, 1982, and thereafter until all of the eligibility requirements of the Law are met.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.



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Gary Smith  
Chief Appeals Referee

Date of hearing: 12/13/82

amp/4608

(Gross )

7227

Copies mailed to:

Claimant

Employer

Unemployment insurance - College Park