



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
 1100 North Eutaw Street
 Baltimore, Maryland 21201
 Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	697-BR-90
	Date:	July 13, 1990
Claimant:	Appeal No.:	9005620
	S.S.No.:	
Employer:	L.O.No.:	45
	Appellant:	CLAIMANT
Issue:	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 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.

August 12, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT 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 the decision of the Hearing Examiner.

When this claim was first filed, the Claims Examiner took information from the employer over the phone, amounting to a list of allegations concerning the claimant's job performance. The Claims Examiner disqualified the claimant for a five-week period, and the claimant appealed.

The claimant appeared at the hearing, but the employer did not. At the hearing, the Hearing Examiner took testimony on each allegation previously made by the employer. The claimant basically denied each allegation. Her testimony, which was not contradicted by any testimony on the other side, was that her personal phone calls were limited to the time before work and lunch hour, and that she did not refuse to do work on the last occasion. All of the other allegations were denied, or explained in a way which reflected no fault on the claimant's part.

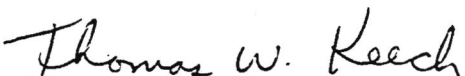
The Hearing Examiner erred when he concluded that the claimant had abused the telephone policy and has refused to work. There was no substantial evidence to support these allegations. In a proper case, an employer's allegations phoned in to a Claims Examiner may form the basis for a decision. The proper case would be where such allegations are supported by other evidence (such as by testimony), where the allegations are admitted by a claimant or where the claimant's testimony denying such allegations is found (in the decision, for a reason articulated in the decision) to lack credibility. Since none of these circumstances are present in this case, the Hearing Examiner's conclusions drawn were erroneous.

Based upon the evidence presented, the Board finds as a fact that, with respect to the employer's allegations, the claimant was in each instance acting reasonably, and was not guilty of any misconduct.


DECISION

The claimant was discharged, but not for any misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

	Date:	Mailed: 5/17/90
Claimant: Randie S. Lipman	Appeal No.:	9005620
	S. No.:	
Employee: Graphics Factory, Inc.	L.O. No.:	045
	Claimant:	Claimant

Issue: Whether the claimant was discharged for misconduct connected with the 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 1, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Randie S. Lipman - Present

Not Represented

FINDINGS OF FACT

The claimant was employed by Graphics Factory, Inc. from December 1, 1989 until March 27, 1990. She was an office manager earning \$346.00 per week. The employer reported to the Agency that the claimant was discharged because a client complained that she

yelled at them; that she refused to take specifications.

She used the telephone excessively for personal use and she would swear on the phone at her boyfriend.

She would take an hour and half for lunch when only one hour was allowed.

The claimant was terminated when the employer gave her work to do and she sat at her desk and filed her nails.

In rebuttal, the claimant denied her yelling at a client and she explained that she did not know how to take specifications as she was never instructed.

The claimant admitted that she spoke to her boyfriend before working hours and during lunch time.

In regards to taking an hour and half for lunch, the claimant stated that on occasions she was sent on errands for the employer and thus used the extra time.

Concerning the incident when she was given work to do and sat at her desk and filed her nails, the claimant explained that the work had been done.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during the hours of employment, or on the employer premises. Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113 (1974).

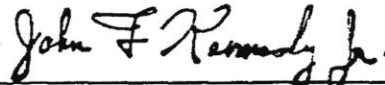
It is found that the claimant was discharged by the employer for excessive use of the telephone and failing to work when instructed. This must be considered to be a discharge for misconduct connected with the work within the provisions of Section 6(c) of the Law. The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving

benefits from the week beginning March 25, 1990 and the four weeks immediately following.

The determination of the Claims Examiner is affirmed.



John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: May 9, 1990

km/Specialist ID: 45540

Cassette No: 3912

Copies mailed on May 17, 1990 to:

Claimant

Employer

Unemployment Insurance - Northwest - (MABS)