DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— DECISION —

Decision No.: 701-BH-85

Date: August 29, 1985

Claimant: Reginald Thornton

Appeal No.: 14157

S. S. No.:

Employer: UMAB

L.O. No.: 1

Appellant: CLAIMANT

ATTN: Alfred Fick, Employee
Relations Manager

Issue: Whether the Claimant was discharged for gross misconduct, connetted with the work, within the meaning of § 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON September 28, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Present at hearings on 6/18/85 and 7/9/85

Reginald Thornton - Claimant
Gwen Tromley - Attorney
Legal Aid Bureau, Inc.

FOR THE EMPLOYER:

Anthony Walker -
Maintenance Supvr.
Alfred Fick -
Employee Relations
Manager

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment & Training's documents in the appeal file.

The claimant's representative objected to the introduction of employer's exhibit B-1 and employer's exhibit B-2 at the hearing on the grounds of relevance. Clearly, these documents are relevant to the reason for the discharge of the claimant. The reasons for the discharge of the claimant are listed on employer's exhibit B-3. For example, one of the reasons the claimant was discharged was that he had established a record of abuse of sick leave. Many of the documents in the employers exhibits B-1 and B-2 are specific records of such abuse. Clearly these documents are relevant to the official reason given for firing the claimant. In addition, there is no reason in this record to believe that the official reasons given were not the real reasons.

FINDINGS OF FACT

The claimant was employed from 1974 until 1984 as a senior maintenance mechanic for the University of Maryland at Baltimore.

Beginning on March 3, 1975, the claimant began to exhibit an excessive use of sick leave. This pattern continued uncorrected for ten consecutive years. The claimant was repeatedly warned and counseled about his abuse of sick leave. He was also warned and counseled about taking unauthorized leave without pay, reporting to work late and negligence towards his job responsibilities. These reprimands and suspensions continued up to and throughout 1984.

On November 4, 1984, the claimant reported to work in such an intoxicated state that he failed to locate the room in which he was supposed to be working. When a fire alarm went off, the claimant failed to discharge his duty to notify the appropriate people and have the fire alarm reset.

As a result of his ten-year history of inadequate work performance, the claimant was suspended immediately pending proceedings for the claimant's discharge. Those proceedings have gone through the fourth step, which is the last step prior to the bringing of charges before the Department of Personnel for the claimant's removal.

The claimant was counseled numerous times over the ten-year period by his employer, but he never mentioned to his employer that he had problem with alcoholism. It is true that the claimant was intoxicated on November 4, 1984. It is also true that, after having been suspended from work, he was diagnosed as an alcoholic by a treatment program. There is insufficient evidence, however, that the claimant suffered an irresistible compulsion to drink or that drinking was the cause of his ten-year history of problems at work.

the lapses, inform the claimant why he was not showing up for work and then cure the personal problem of the claimant which was contributing to these work lapses. Whatever the Employee Assistance Program may mean, the Board is certain that it does not make the employer the legal guardian of its employees nor does it make the employer the insurer against any of the diseases or maladies which the Employee Assistance Program is set up to treat. Even if there were facts to support the notion that the employer knew or should have known of the claimant's alcoholism (and there aren't) the argument that the employer was responsible for the claimant's (alleged) continued alcoholism is a novel view of employer-employee relations which the Board is not inclined to accept.

DECISION

The claimant was suspended 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 November 4, 1984 and until he becomes reemployed, earns at least ten times his weekly benefit amount ($1,750.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed, but for the reasons stated above.

Thomas W. Keech
Chairman

Lloyd A. Wand
Associate Member

DISSENT

The conclusion that the claimant was fired for reasons which accumulated over a ten-year period is not supported by substantial evidence in my view of the record. The claimant was fired for the incident which occurred on November 4, 1984, and that incident constitutes misconduct within the meaning of §6(c) of the law. See, e.g., Tundel v. Unemployment Compensation Board of Review, 44 Pa. Cmwlth. 312, 404 A.2d 434 (1979).

Maurice E. Hill
Associate Member

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CONCLUSIONS OF LAW

The claimant's ten-year history of abuse of leave, neglect of duty and tardiness, when coupled with his gross neglect of duty on the night of November 4, 1984, constitutes a series of repeated violations of employment rules, showing a gross indifference to his employer's interests. His reporting to work in an intoxicated condition also shows a deliberate violation of standards his employer has a right to expect, showing a gross indifference to his employer's interests. This is gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law.

The claimant has, however, not yet been discharged for this gross misconduct. This same employer has argued before, before the Board of Appeals, that it is legally set up in such a way that it may discharge employees as opposed to merely bringing charges for removal before the Department of Personnel. In the case of Cain v. University of Maryland Hospital (194-BH-84), the Board of Appeals rejected that argument. In §12-1A-02(b) of the Education Article, the University of Maryland has the authority to designate classes of employees who will receive all of the protections of the state merit system. The claimant was evidently an employee in this category. One of the protections of the merit system, Article 64A §33, is that such an employee cannot be fired prior to a hearing and decision by the Secretary of Personnel or his designee. Clearly, the claimant's legal status is still that he is suspended pending charges for removal.

The distinction between a suspension and a discharge has been rendered less important, however, by the changes in the Maryland Unemployment Insurance Law effective July 1, 1984. As of that date, a penalty can be imposed under §6(b) of the law for either a suspension or a discharge. The claimant was therefore suspended for gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law.

During his ten-year history of suspensions, warnings and counsellings by the employer, the claimant never mentioned to his employer that he had a problem with alcohol. Even after the last incident, he denied that he was intoxicated. The Board is inclined to take the claimant at his word and to conclude that his numerous and longstanding failures to meet his employer's requirements were due to the low priority in his life which he placed those requirements rather than the result of an irresistable compulsion to drink.

The claimant argued that the employer failed to discover the claimant's alcoholism and treat it under its employee assistance program and that this somehow excuses the claimant's conduct. This argument, if it were accepted, would be the ultimate in a "no-fault" employment contract. According to this argument, the claimant should be absolved from his ten-year history of employment lapses because the employer did not discover the reason for

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed: Feb. 14, 1985

Claimant: Reginald Thornton

Appeal No.: 14157

S. S. No.:

Employer: University of Maryland at Baltimore

L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance 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 March 1, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Present, accompanied by Witness , Ann Thornton & Gwen Tromley, Paralegal

FOR THE EMPLOYER:

Represented by Diane Pezzimenti, Employer Relations Representative & Cpl. Joe Davis, University of Md Police & Anthony Walker, Maintenance Supervisor

FINDINGS OF FACT

The claimant was employed by the University of Maryland of Baltimore from October 5, 1974 until November 5, 1984 as a senior maintenance mechanic. The claimant worked the midnight shift and, as senior maintenance mechanic, his duties involved all mechanical and electrical problems that arose on his shift.

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DATES OF HEARINGS: June 18, 1985 and July 9, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

MS. Gwen Tromley
Legal Aid Bureau, Inc.

Dept. of Personnel
Administrative Officer
Unemployment Insurance Unit

UNEMPLOYMENT INSURANCE - BALTIMORE

If he could not handle the call or problem, the claimant had instructions about what to do. The claimant worked out of a control room unless responding to a call and carried a pager so that he can be contacted in an emergency. On November 5, 1984, the claimant came in late and could not find his key to the work control center. The claimant called communications and explained that he did not have the pager and would be in the lock shop. He was contacted and told that a fire alarm had gone off in a dormity building. Under employer's procedures, the claimant should have investigated the incident but he did not. His supervisor was called and when he arrived he found the claimant smelling of alcohol but apparently knowing what was going on. The claimant was terminated for his actions on that shift.

The claimant did not know what time he got to work that shift but did not drink on the job. The claimant had been drinking before he went to work. He could not voluntarily control his drinking problem. He had discussed this with his wife and had gone to the Veterans Administration Hospital a couple of weeks before this incident.

The claimant had been "talked to" about his absenteeism by his supervisor on several occasions but the claimant always brought in- documentation and was believed. His supervisor is not trained in alcohol detection but has sent other employees to employer's program. The claimant was aware of this program but did not attend. All and all, the claimant's attendance was a little worse than most other employees.

The claimant was admitted to the Baltimore Veteran's Administration Medical Center for alcohol detoxification on November 9, 1984 and discharged on November 14, 1984 on and antabuse treatment. He presently attends schools on Thursday evenings.

CONCLUSIONS OF LAW

Gross misconduct is defined as conduct which is a deliberate and willful disregard of the standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest. The claimant violated an established operating policy and procedure of his employer. Even though the claimant was aware of his drinking problem before the incident which resulted in his termination, he did not take advantage of the employer's program of which he was aware and did not instigate any self-help until after the termination. Therefore, it must be found that the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Thus, the determination of the Claims Examiner, will be affirmed.

3 Appeal No. 14157

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. Benefits are denied for the week beginning November 4, 1984 and until he becomes reemployed and earns at least ten times his weekly benefit amount ($1,750.00), and thereafter becomes unemployed through no fault" of his own.

The determination of the Claims Examiner is affirmed.

Seth Clark

Seth Clark
Appeals Referee

Date of hearing: Jan. 17, 1985
jlt
(0286, 0287A,B-Sowbel)

Copies mailed on Feb. 14, 1985 to:
Claimant
Employer
Unemployment Insurance -- Baltimore

Legal Aid Bureau, Inc.