



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
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SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND

HARRY HUGHES
Governor

— DECISION —

Decision No.: 707 -BH-86

Date: Sept. 5, 1986

Claimant: Paulette L. Alston

Appeal No.: 8514186

S. S. No.:

Employer: Phillips Harborplace

L.O. No.: 1

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. Whether the claimant was discharged for misconduct connected with the 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 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.

October 5, 1986

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - present

FOR THE EMPLOYER:

Connie McGrain,
Dir. of Personnel
Millie Mills,
Former Prog. Mgr.

claimant was not acting out of any fear for her safety whatsoever, but was attempting to injure Starletta as a retaliation for Starletta's outrageous insults and other conduct. The Board has ruled that, even where a claimant was initially struck by another employee, a claimant's attempt to continue to fight despite orders to stop and efforts to physically restrain the claimant constituted gross misconduct. Goodall v Holy Cross Hospital (507-BR-84).

The Board wishes to make clear that it is not making a finding that the other employee was an innocent party or that the claimant was not rightfully provoked by the other employee's words and actions. Clearly, Starletta's words used to the claimant were outrageous and uncalled for, and her grabbing the claimant's shirt with her fingers was an assault of sorts. If the Board had believed that the claimant was in fear for her safety or that punching Starletta was the only way by which the claimant could have freed herself from Starletta's grip, the Board would have ruled differently.

It is clear from all of the facts in the case, however, that the claimant did not fear for her safety but that she was provoked by the outrageous conduct of Starletta. Despite this provocation, the claimant's deliberate attempts to physically injure Starletta in retaliation was a deliberate violation of standards the employer had a right to expect, showing a gross indifference to the employer's interest.

The claimant's putting her own interests in revenge above the interests of the employer and peace and harmony in the workplace clearly showed a gross indifference to the employer's interest. Again, although the claimant was seriously provoked, her decision to physically attack the other employee was deliberate.

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. She is disqualified from receipt of benefits for the week beginning October 27, 1985 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$750) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Harold A. Warrick

Associate Member

K:W

jol

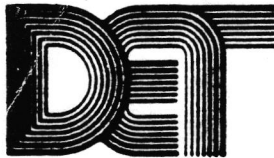
DATE OF HEARING: August 12, 1986

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

**STATE OF MARYLAND
HARRY HUGHES
Governor**

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BOARD OF APPEALS

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Associate Members**

**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Claimant: Paulette R. Alston
Date Mailed: March 3, 1986
Appeal No.: 8514186
S. S. No.:

Employer: Phillips Seafood Restaurant
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 Law. Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) 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 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 18, 1986**

— APPEARANCES —

FOR THE CLAIMANT:
Present

FOR THE EMPLOYER:
Connie McGrain - Director of Personnel

FINDINGS OF FACT

Claimant was discharged from her job as a food preparer for Phillips Seafood Restaurant on or about October 28, 1985, after more than three and a half years of employment there, for violating a company rule prohibiting fighting with a coemployee on company property. Claimant had been having difficulty with a coemployee named Starlet and, after the claimant complained to her supervisor regarding the difficulty that the claimant was having with this coemployee, was assigned to a different work station. On the day in question Starlet came over to the claimant while the claimant was working at her own work station. When Starlet

EVIDENCE CONSIDERED

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 into this case, as well as Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed for approximately three and half years as a food preparer for the employer. She was discharged on October 28, 1985 for violating a company rule prohibiting fighting with a co-employee on company property.

The claimant had difficulty in getting along with a number of employees. The claimant was particularly antagonistic toward another employee named Starletta. Starletta was also antagonistic toward the claimant and would regularly use foul language toward the claimant for the express purpose of insulting the claimant.

On her last day of work, the claimant and Starletta were engaged in a heated shouting match. The supervisor approached and physically stood between the two parties. At this point, neither the claimant nor Starletta had touched the other.

While the supervisor was attempting to separate the parties, Starletta reached over the supervisor's shoulder and grabbed the claimant's shirt in one hand while shaking her finger at her with the other hand calling her a "fat bitch." The claimant retaliated by punching Starletta in the face, taking care to punch around the supervisor who was standing directly between the two of them. Starletta attempted to retaliate and the claimant succeeded in punching Starletta again and grabbing her glasses from her face and throwing them to the floor.

The claimant was not acting in self-defense, as the supervisor was between her and Starletta at the time the claimant threw the first punch. The claimant was not in any fear as a result of Starletta grabbing her shirt over the supervisor's shoulder. Rather, the claimant used this as an opportunity to revenge herself upon Starletta for the many insults directed at her from Starletta over her period of employment. The claimant's intention was to injure Starletta for this activity.

CONCLUSIONS OF LAW

If the claimant were truly acting in self-defense, her actions might not be gross misconduct, even if she over-reacted and used somewhat too much force. See, the Board's decision in Sacco v Jones Associates (146-BH-84). In this case, the

overheard the claimant and a coemployee working with her talk about a third employee, Starlet turned to the claimant and the coworker and told them why don't you old bitches mind your own business. In past complaints that the claimant had with Starlet, the claimant had told her supervisor on several occasions that she would not tolerate Starlet calling her an old bitch. The claimant lost her control when Starlet grabbed the claimant's T-shirt at the breast and shook her finger under the claimant's nose. At this point the supervisor stepped in between the two and attempted to separate them. When Starlet pulled so hard on the claimant's T-shirt that it began to tear the claimant swung her arm at Starlet hitting her in the face and broke her glasses and cutting her face above the eyebrow.

The claimant knew that it was a strict rule of the company not to tolerate fighting among its employess on company property. The claimant had been warned on several occasions in the past to mind her own business and to avoid getting into trouble with her coemployees.

CONCLUSIONS OF LAW

It is concluded from the weight of the credible evidence that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) and not for gross misconduct connected with the work within the meaning of Section 6(b) of the Law. No probative evidence was submitted to challenge or dispute the claimant's sworn testimony that Starlet was the aggressor in this case since she came over to the claimant and without provocation laid her hands on the claimant by grabbing her shirt in the left hand and shaking a finger at the claimant with her right hand. No probative evidence was submitted to challenge or dispute the claimant's sworn testimony that Starlet grabbed and pulled her shirt so vigorously that it tore. No probative evidence was submitted to challenge or dispute the claimant's sworn testimony that it was not her intention to strike a blow in anger at Starlet but that it was her intention only to push her away from her.

On the other hand the claimant acknowledged that she had told Millie, her supervisor, that she was sick and tired of having Starlet call her an old bitch and that she would not tolerate it any more.

The gross misconduct disqualification provision is not applicable in this situation since it lacks the degree of culpability contemplated by that section. The claimant was not the aggressor in this case. She did not start the fight. Starlet was the first one to lay her hands on the claimant. On the other hand it was unreasonable for the claimant to attempt to strike back at Starlet while the supervisor was in between the two attempting to separate them. Moreover, the claimant herself acknowledged that she had told

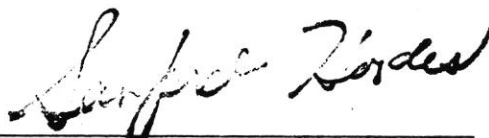
the supervisor that she would not tolerate being called an old bitch by Starlet any longer. There are no valid circumstances present in this case to warrant the reduction from the maximum disqualification provided for under Section 6(c) of the Law.

DECISION

The claimant is unemployed because she was discharged by Phillips Seafood Restaurant for misconduct connected with the work within the meaning of Section 6(c), but not for gross misconduct connected with the work within the meaning of Section 6(b) of the Law. Benefits are denied for the week beginning October 27, 1985 and for the nine weeks that followed ending January 4, 1986. Benefits are payable to the claimant as of the week beginning January 5, 1986 if she was otherwise eligible.

The determination of the Claims Examiner to disqualify under Section 6(b) of the Law is rescinded. The denial of benefits from the week beginning October 27, 1985 until such time that she again becomes employed and earns at least ten times her weekly benefit amount (\$750.00) and thereafter becomes unemployed through no fault of her own, is rescinded.

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.



Sanford Hordes
Hearings Examiner

Date of hearing: January 14, 1986
pc/Groves
(0243-B)

Copies mailed on March 3, 1986 to:

Claimant
Employer
Unemployment Insurance - Baltimore