Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

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

— DECISION —

Decision No.: 714-BR-89

Date: August 25, 1989

Claimant: Alonzo Todd

Appeal No.: 8906590

S. S. No.:

Employer: Harkless Construction, Inc.
ATTN: Cornelius Harkless
Secretary/Treasurer

L.O. No.: 50

Appellant: CLAIMANT

Issue:

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON September 24, 1989

— 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. The Board has not considered as evidence any statements in the claimant's

appeal letter, but has confined its review to the record made before the Hearing Examiner.

The Hearing Examiner's conclusions of law are incorrect. The Hearing Examiner found as a fact that the claimant was unable to communicate with his crew sufficiently in order to increase the safety conditions at the work sites. Based on this fact, the Hearing Examiner concluded that the claimant had committed gross misconduct within the meaning of Section 6(b) of the law.

The Board disagrees with this conclusion. A mere inability to perform a job function is not misconduct within the meaning of the Maryland Unemployment Insurance Law. In a case such as this, the employer, who has the burden of proof in a discharge case, must show that the claimant either deliberately did something that worsened the safety conditions, allowed a dangerous condition to occur voluntarily, or neglected his duties. The employer in this case simply did not meet its burden. The employer's testimony was general testimony that the claimant was considered a serious problem, that his work crews had a larger number of accidents than the work crews of other supervisors, and that he was given many warnings. All of these facts, while they may show that the claimant was not a good supervisor, do not show either a deliberate violation of work rules or negligence.

A mere showing of substandard job performance is not enough to prove misconduct within the meaning of the Unemployment Insurance Law. The employer has not met its burden of proof, and the Board will adopt the Hearing Examiner's findings of fact that the claimant's job deficiencies were due to an inability to communicate with his crew. This does not meet the definition of misconduct.

DECISION

The claimant was discharged, but not for misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from Harkless Construction, Inc. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.

Thomas W. Leech
Chairman

Boyd A. Warnick
Associate Member

K:HW
kbm

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EMPLOYER

OUT-OF-STATE CLAIMS