

 **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.: 732-BR-89  
Date: August 30, 1989  
Appeal No.: 8905852  
S. S. No.:

Claimant: Alfred Smith

Employer: Bethany House, Inc.  
c/o ADP/UCM  
ATTN: Gabrielle Allen  
Lane

L O. No.: 1  
Appellant: EMPLOYER

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.

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— 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 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 29, 1989

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— 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 and concludes that the claimant was discharged for gross misconduct, within the meaning of Section 6(b).

After the resident was calmed down and left the building, the claimant talked to his supervisor. This conversation was carried on in the claimant's office.

During the course of the conversation, the claimant exhibited a pen knife and told the other employee what he would do to the resident if he became belligerent. There was no neglect or abuse of this resident and the conversation was just between the claimant and the other employee.

The claimant was terminated because of the employer's concern for the security and safety of the residents. The claimant, on the other hand, made the statement in jest to another employee and not for the benefit of any of the residents.

Possession of a knife or other weapons are not permitted on the premises pursuant to the employer's policies and rules.

#### CONCLUSIONS OF LAW

Section 6(b) of the Maryland Unemployment Insurance Law requires a denial of benefits until re-employment, when it is held that an individual is discharged for gross misconduct connected with his work.

Gross misconduct is defined in the Act as a deliberate and willful disregard of the standards of behavior which an employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded his obligations. A lesser disqualification is imposed when an individual is discharged for misconduct connected with the work.

Misconduct means a substantial deviation from the proper standards of conduct. Both terms connote the element of a deliberate and willful wrongdoing.

Based upon the testimony presented at the appeals hearing, it is concluded that the claimant violated one of the employer's work rules by having a knife on the premises. Since the claimant's conduct during the occurrence on November 6, 1988, did not occur in front of or within the earshot of any of the residents, the statements made by the claimant cannot be considered to be gross misconduct within the meaning of Section 6(b) of the Law.

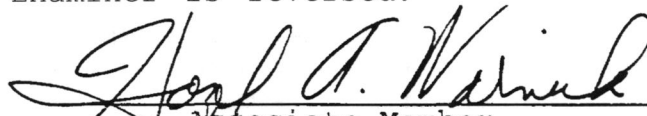
The Board concludes that the final incident alone, which lead to the claimant's discharge, was gross misconduct. The claimant worked with and lived with teenage boys who suffered from serious behavior disorders. Part of his duties included restraining them, when necessary. In addition, bringing a weapon on the premises was strictly forbidden, for obvious reasons. Under these circumstances, the claimant's possession of a knife, his brandishing it in his supervisor's presence, and his accompanying statements, even though the claimant did not directly threaten or assault the resident, amount to a deliberate and willful disregard of standards of behavior which his employer had a right to expect, and which showed a gross indifference to the employer's interest, one of the definitions of gross misconduct. See, Sumpter v. Loyola Federal, 783-BH-83 (claimant's possession of deadly weapon on employer's premises, in violation of employer's policy, and threatening of co-workers with the weapon constitutes gross misconduct).

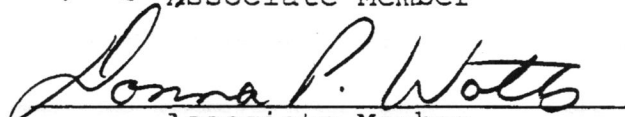
The Board further concludes that this incident, together with the claimant's failure to get a valid driver's license, as required by the employer, and his having driven residents in a company vehicle, without having obtained a driver's license, amounts to gross misconduct as well.

#### DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 13, 1988 and until he becomes re-employed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Associate Member

Hw:w  
kbm  
COPIES MAILED TO:

CLAIMANT  
EMPLOYER  
UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**  
Department of Economic &  
Employment Development

William Donald Schaefer  
Governor

J. Randall Evans  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201

(301) 333-5040

— DECISION —

Claimant:	Alfred R. Smith	Date:	Mailed: 6/8/89
		Appeal No.:	8905852
		S.S. No.:	
Employer:	Bethany House, Inc. c/o ADP	L.O. No.:	001
	Jane	Appellant:	Employer
Issue:	Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.		

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— 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

June 23, 1989

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

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— APPEARANCES —

FOR THE CLAIMANT:

Alfred R. Smith - Present

FOR THE EMPLOYER:

Lee Sullivan,  
Executive Director;  
William H. Oseler,  
ADP

FINDINGS OF FACT

The claimant was employed by Bethany House, Inc., as a direct care worker from May of 1988 until November 15, 1988. The claimant was a live-in team member in a group home for teenaged males.

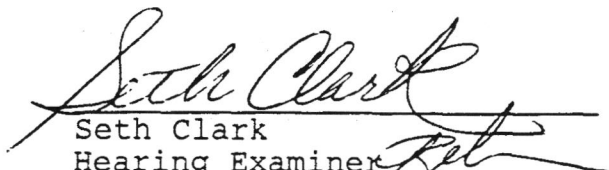
The claimant was terminated for an incident which occurred on November 6, 1988. One of the residents became agitated and was talking loud and was using foul language.

However, the possession of a knife on the premises was a violation of the employer's rules and policies, and, therefore, amounts to misconduct within the meaning of the Law. Therefore, the determination of the Claims Examiner which imposed a ten week penalty will be affirmed.

DECISION

The claimant was separated from his employment for acts which constitute misconduct within the meaning of Section 6(c) of the Law. Benefits are denied this claimant for the period beginning November 13, 1988 and running through January 21, 1989.

The determination of the Claims Examiner is affirmed.

  
Seth Clark  
Hearing Examiner

Date of Hearing: June 5, 1989  
rch/Specialist ID: 01031  
Cassette Number: 3970 A & B  
Copies mailed on 6/8/89 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)