



STATE OF MARYLAND  
HARRY HUGHES  
Governor

RUTH MASSINGA  
Secretary

# DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: 383-5032

BOARD OF APPEALS  
THOMAS W. KEECH  
Chairman  
HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members  
SEVERN E. LANIER  
Appeals Counsel

## —DECISION—

|   |               |               |
|---|---------------|---------------|
|   | DECISION NO.: | 758-BH-83     |
|   | DATE:         | June 23, 1983 |
| CLAIMANT: Benjamin R. Townsend            | APPEAL NO.:   | 00390         |
|   | S. S.NO.:     |               |
| EMPLOYER: Baltimore Dept. of Public Works | NO.:          | 40            |
|   | APPELLANT:    | EMPLOYER      |

ISSUE: Whether the Claimant was discharged for gross misconduct, connected with the work, within the meaning of § 6(b) of the Law; and whether the Claimant was discharged for misconduct, connected with the work, within the meaning of § 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT July 23, 1983

### — APPEARANCE —

FOR THE CLAIMANT:

Benjamin Townsend - Claimant  
Ellen Pinter - Legal Aid

FOR THE EMPLOYER:

Charles Spinner -  
Personnel Tech.  
Charles Evans -  
Supervisor

### 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 Employment Security Administration's documents in the appeal file.

It was uncontested in this case that the Claimant, who was working an emergency overtime shift with two other employees, left the work place at approximately the middle of the shift, notified no supervisory employees of his intention to leave and left the work site in such a way that the other two employees could not accomplish any work. Once these facts have been established, the burden shifts to the Claimant to explain why he acted in such a manner. The Board of Appeals, however, finds little credibility in the Claimant's testimony. The Claimant's actions on the night in question, therefore, remain unexplained and unexcused.

#### FINDINGS OF FACT

The Claimant was employed on March 12, 1979 with the City of Baltimore. He was originally an Operating Technician I. After an incident in which he was under the influence of alcohol at work, he voluntarily took a demotion to become a laborer and agreed to enter an alcohol rehabilitation program in order to keep his job. On November 29, 1980, the Claimant again reported to work intoxicated.

When the Claimant became intoxicated on the job, he would call supervisors who were off duty, and other personnel who were on duty for the purpose of haranguing them with meaningless conversation.

On December 5, 1982, the Claimant reported to an emergency overtime assignment. He was scheduled to work from 12:00 midnight until 8:00 a.m. the following day. The Claimant worked with two other workers. The Claimant, however, was the only one who could operate the dredge. The other workers were merely there for safety reasons. The other workers were not able to perform any useful work for the City of Baltimore when the Claimant was not present.

The Employer's policy prohibited the use of a lunch hour during the emergency overtime shift which the Claimant was working. The Claimant left the work site at approximately 3:30 a.m. and did not return. He notified no one in supervision of his intention not to return. He knew that the other two men could not perform any useful work without his being there. Before the Claimant left the premises, however, he did make harassing phone calls to Mr. Evans, one of his supervisors, and to at least one other supervisor. These phone calls were made at approximately 3:30 a.m. in the morning. There was no rational purpose for these phone calls, and the Claimant had been specifically warned by Mr. Evans not to make such phone calls in the middle of the night.

CONCLUSIONS OF LAW

The burden is clearly on the Claimant to show that he left the work site for a good reason on that night in question. The Claimant in this case has provided no evidence which the Board considers to be credible which might tend to excuse or explain this absence. Although the Employer has provided some evidence that the Claimant left the premises for the purpose of engaging in alcohol consumption, the Employer does not have the burden of explaining why the Claimant left his job in the middle of the shift. The Employer's evidence, however, did suffice to convince the Board that the Claimant's story itself was not credible.

Leaving one's job in the middle of the work shift without explanation or reasonable excuse, especially during an emergency overtime in a situation in which leaving the job would require two other overtime workers to be utterly useless to the Employer, is clearly a deliberate and willful disregard of standards which the Employer has the right to expect, showing a gross disregard to the Employer's interest. This is gross misconduct, within the meaning of § 6(b) of the Maryland Unemployment Insurance Law.

DECISION

The Claimant was discharged for gross misconduct, connected with the work, within the meaning of § 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning December 12, 1982 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,360.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

*Thomas W. Keech*  
Chairman

*Hazel A. Warrick*  
Associate Member

*Maurice E. Hill*  
Associate Member

DATE OF HEARING: May 24, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

The Legal Aid Bureau, Inc.  
ATTN: Ellen Pinter  
714 East Pratt Street  
Baltimore, Maryland 21201

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
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BOARD OF APPEALS  
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 MARK R. WOLF  
 Administrative  
 Hearings Examiner

STATE OF MARYLAND  
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 KALMAN R. HETTLEMAN  
 Secretary

- DECISION -

CLAIMANT: Benjamin R. Townsend  
 DATE: March 7, 1983  
 APPEAL NO.: 00390  
 S. S. NO.:  
 EMPLOYER: Baltimore Department of Public Works L.O. NO. 40  
 APPELLANT: Claimant  
 SUE: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON March 22, 1983

- APPEARANCES -

FOR THE CLAIMANT: Present, accompanied by Mrs. Townsend, Wife  
 FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant was employed by the Baltimore Department of Public Works as a maintenance technician I, earning \$385.00 net bi-weekly until his last day of work, December 5, 1982.

In November 1979 and 1980, the claimant had two occasions where he was warned once as a result of the claimant being intoxicated. As a result of this, the claimant was placed on an alcohol program. As a result of this program, the claimant was instructed to take Antibus. In order to get the Antibus, the claimant would have to report to City Hospitals for each visit it would cost him \$20.00. The claimant needed Antibus two times

a week. An agreement was made where the claimant's supervisor would give the claimant Antibuse so that the other employees would not know what was being done. However, after the claimant became shop steward and had some run-ins with his supervisor, the supervisor would give the claimant his Antibuse in front of other employees who of course inquired as to what it was.

On the claimant's last day of work, the claimant, since he has not had any Antibuse for three or four days, felt that he could consume several beers which the claimant did. The claimant then went to work in an extra job which is a dredging operation for the employer. The claimant would work the barge and two men would stay on the shore and watch him to help him if anything occurred that would endanger the claimant, also to assist the claimant in the event he would need anything. When the claimant left- for lunch, he became ill because of the consumption of the beer and the Antibuse still in his system. As a result of being sick, the claimant did not return from lunch to work. The claimant denies having drunk anything, while he was on the job.

As of the time of the hearing, the claimant was unemployed.

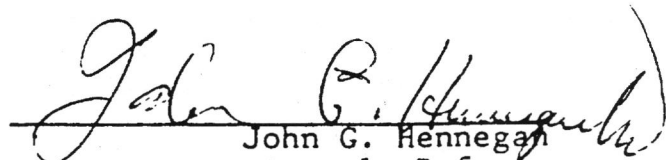
#### CONCLUSIONS OF LAW

The Appeals Referee finds that the claimant did not drink any alcoholic beverages while on the job and that his consumption of beer prior to going to work and gambling with the Antibuse in his system, resulting in the claimant becoming ill and having to leave was misconduct and not gross misconduct connected with his work within the meaning of the Maryland Unemployment Insurance Law and therefore, the determination of the Claims Examiner will be reversed.

#### DECISION

The claimant was discharged for misconduct, connected with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning December 12, 1982 and five weeks immediately following. The determination of the Claims Examiner is reversed.

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.

  
John G. Hennegan  
Appeals Referee

Date of hearing: Feb. 14, 1983

jlt

(No cassette No-Vidler)

Copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint