



# 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.:	759-BH-89	
	Date:	September 1, 1989	
Claimant:	Edward V. Hanlon	Appeal No.:	88-UCF-23
		S. S. No.:	
Employer:	Dept. of Commerce Unemployment Compensation ATTN: Myerle C. Hendricks	L.O. No.:	7
		Appellant	CLAIMANT
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the 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 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      October 1, 1989

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— APPEARANCES —

FOR THE CLAIMANT:

Edward Hanlon - Claimant

FOR THE EMPLOYER:

Myerel Hendricks  
Attorney

## 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 Economic and Employment Development's documents in the appeal file.

A great deal of the evidence and testimony presented in this case, both before the Hearing Examiner and before the Board involves the actions of other employees of the Census Bureau. Some testimony has been presented that following the April 17, 1987 memorandum, several other employees in addition to the claimant continued to use the Census Bureau computer equipment for personal and unauthorized use. The Board concludes that the employer has met their burden of proof, with respect to this claimant, and it is not necessary for the employer to present their entire disciplinary history of all their employees, in this case. In the absence of any substantial evidence of bad faith, on the part of the employer, it would be inappropriate to place on the employer the additional burden of justifying their disciplinary actions with regard to other employees.

## FINDINGS OF FACT

The claimant was employed by the Bureau of Census from May, 1978 until January 8, 1988. The claimant was discharged by his employer for unauthorized use of the Census Bureau's computer equipment and materials, unauthorized conduct of personal business while in duty status, insubordination and misuse of administrative/judicial procedures.

On April 17, 1987, a memorandum was issued to all employees by the Census Bureau with regards to the use of Census Bureau equipment and material. This memorandum reiterated a prior published government ruling stating that an employee shall not directly or indirectly use or allow the use of government property of any kind for other than officially approved activities. It further reminded employees that office equipment, including micro computers and word processors are only for official, approved activities. The memorandum stated

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<sup>1</sup> Accordingly the claimant's Motion to Reopen Hearing dated August 28, 1989, is denied.

that private correspondence, football pools, grievances, private organization or club notes, term papers, freedom of information requests and so forth are not official Census Bureau activities and that an employee could not use official equipment for these reasons. The memorandum did allow for union officials and representatives to occasionally use Census Bureau typewriters (but not word processors) when the machines were not otherwise in use. The document further provided that if an employee was unsure whether the use of the equipment was authorized, it was the employees responsibility to request clarification before using the equipment.

After April 17, 1987, the claimant made personal use of the employer's computer without obtaining prior authorization. Between June 25, 1987 and October 21, 1987, the claimant used the Census Bureau equipment to generate more than 100 documents for the claimant's personal use. None of these documents or the creation of them were related to the claimant's official duties as an employee of the population division, Bureau of the Census. The Board finds as a fact that these documents were created by the claimant and not by his wife.

The Board also finds as a fact that numerous documents created by the claimant on the Census Bureau equipment were in fact created during the time that the claimant was in duty status. The creation of these documents show a series of repeated violations of employment rules, proving that the employee regularly and wantonly disregarded his obligations.

The claimant requested and was granted approval to be on leave of duty from September 22, 1987 through October 1, 1987. The claimant was physically present in the building during most of this time, however he was using this time to conduct and attend to union activities.

On September 22, the claimant was reminded and specifically told by his supervisor that he was not to use and had no authority to use the computer system during this time that he was on non-duty status. The claimant continued to use the computer while he was on non-duty status on the dates of September 23 and September 29. These acts of the claimant amount to insubordination.

Between 1985 and the time of his discharge from the Census Bureau, the claimant filed numerous actions including privacy act request, FOIA request, grievances and lawsuits. The Board

finds as a fact that insufficient evidence has been presented to establish that the claimant either misused or abused the administrative/judicial procedures available to him.

#### CONCLUSIONS OF LAW

Based on the facts presented, the Board of Appeals finds that the claimant was discharged from his employment for gross misconduct, connected with the employment, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Gross misconduct is defined in Section 6(b) of the law as (1) conduct of the employee that is a deliberate willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest, or (2) a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded his obligations.

The facts found in this case show that the claimant after the April 17, 1987 memorandum continued to use the Census Bureau equipment, particularly the computer for personal use. Not only did he use the computer for his personal use to an excessive degree, the claimant made use of the computer when he was, in fact, on non-duty status, an additional violation of employment rules. The Board finds that the claimant's act of insubordination as evidenced by his continued use of the computer on the dates of September 23 and 29 when he was in off-duty status, after having personally been told on September 22 by his supervisor that he was not authorized to use the computer for the purposes he was using them for, raises his conduct to the level of gross misconduct.

#### 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 the receipt of benefits from the week beginning January 3, 1988 and until he becomes reemployed, 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.

*Donna P. Wotto*

Associate Member

*Hazel A. Warrick*

Associate Member

*Thomas W. Keech*

Chairman

D:H:K

kmb

DATE OF HEARING: June 27, 1989

COPIES TO BE MAILED TO:

CLAIMANT

EMPLOYER

Edward Hanlon, Esquire  
Greenbelt Professional Center

UNEMPLOYMENT INSURANCE - COLLEGE PARK



# Maryland

## Department of Economic & Employment Development

William Donald Schafer  
Governor  
J. Randall Evans  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201

— DECISION —

<b>Claimant</b>	Edward V. Hanlon	<b>Date:</b>	Mailed: March 22, 1989
		<b>Appeal No.:</b>	88-UCF-23
		<b>S S. No.:</b>	
<b>Employer:</b>	Department of Commerce Unemployment Compensation	<b>LO. No.:</b>	7
		<b>Appellant:</b>	Claimant

**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

April 6, 1989

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

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— APPEARANCES —

FOR THE CLAIMANT

Edward V. Hanlon - Claimant  
John R. Mooney - Attorney

FOR THE EMPLOYER

Myerle C. Hendricks,  
Labor Law Council

STATEMENT OF THE CASE

The claimant filed his claim for unemployment insurance benefits effective January 10, 1988. The Claims Examiner found that he had been discharged from the Department of Commerce for misconduct connected with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The claimant was disqualified by the Claims Examiner for the minimum

disqualification, five weeks, from January 3, 1988 until February 6, 1988. The first week was self-served reducing the actual loss or delay of benefits to four weeks. The claimant and employer both filed timely appeals.

The case was scheduled for hearing and was heard on three dates, May 11, 1988, October 11, 1988 and January 13, 1989. The claimant requested the issuance of a number of subpoenae for testimony and the production of documents, all of which were disposed to the claimant's satisfaction with one exception. The claimant had subpoenaed documents produced on the employer's equipment by the claimant's supervisor in connection with the conduct of a baseball gambling game. These documents were not produced when his supervisor appeared to testify on October 11, 1988. It was stated at that time by a counsel that they were not produced because they were not pertinent. It was pointed out to counsel that the question of whether or not they were competent and pertinent and relevant was for the Hearing Examiner; that he would make that decision when the documents were seen; and that they appeared on their face to be relevant. It was then agreed that the documents would be produced at a continued hearing at a future date. Before that date was scheduled, the attorney for the employer wrote a letter to the Hearing Examiner stating: "The Bureau of Census has determined that it is not cost effective to continue its participation in this matter."

Between the hearing on October 11, 1988, when the claimant's supervisor had testified and failed to produce the documents relating to the operation of the gambling game and the hearing which was later scheduled for January 13, 1989, the claimant's supervisor had retained private counsel and in a collateral case had exercised his Fifth Amendment rights, refusing to answer questions relating to the operation of the gambling game and urging that to require him to testify might tend to incriminate him.

At the final hearing in the case on January 13, 1989, only the claimant and his attorney appeared. At that hearing, the claimant produced additional documentary evidence concerning the refusal of his supervisor to testify concerning the operation of the gambling game in a collateral matter and produced additional documentation and provided also a paper entitled, "Statement in Support of his Appeal." In it, the claimant urged dismissal of the employer's appeal and a finding that the claimant was not discharged for misconduct.

## FINDINGS OF FACT

The claimant was employed by the Bureau of Census from May of 1978 until January 8, 1988. He was discharged by the employer after he used the employer's computer for personal business subsequent to a memo from management forbidding that activity without prior authorization.

On April 17, 1987, management of the Census Bureau put out a memorandum to all employees reiterating a prior published government rule stating that an employee shall not directly or indirectly use or allow the use of government property of any kind for other than officially approved activities. It further reiterated a memorandum from a management member of the Department of Commerce in July of 1985 reminding employees that office equipment, including microcomputers and word processors are only for official, approved activities. It was further stated that private correspondence, football pools, grievances, private organization or club notes, term papers, freedom of information requests and so forth are not official Census Bureau activities and that an employee could not use official equipment for those reasons.

It was further stated in the memorandum that union officials and representatives may occasionally use Census Bureau typewriters (but not word processors) when the machines are not otherwise in use. The document also provided where an employee is unsure whether the use of the equipment is authorized, it is the employee's responsibility to request clarification before using the equipment.

After the April 17 memorandum, the claimant made personal use of the employer's computer without obtaining prior authorization. The claimant alleges that he had authorization of a tacit nature because his supervisor, one Jeffrey Passel, observed him in the use of the computers for personal business and made no complaint, and in fact, helped with the arrangements of footnotes and paragraphing and page dividing. This same Jeffrey Passel was the person who operated an illegal gambling pool using the equipment of the Census Bureau. The claimant was aware that his supervisor, Passel, had used the Census Bureau equipment for this purpose and was not in a position to complain about the private use he was making of the computer. Additionally, the claimant began using the computer for personal activities after April 17 without asking his supervisor, Mr. Passel, and never did specifically ask for permission from anyone to use the equipment for the personal



activities in which he engaged after that date. Some of those personal activities involved performing tasks in connection with his union organizing and representational activities and preparing a paper for law school. The claimant at the time of the events in the case was a law student and is now a member of the bar.

The claimant admits to thirteen separate uses of the equipment after April 17, 1987 and denies that the remaining 106 uses which were made by his fiancée at that time and his wife involved work done for him.

The claimant was a thorn in the side of his employer's. He had been very active in union organizational activities and union activities of a representational nature. Additionally, he had enforced his rights thoroughly in his various disagreements with his employer. The employer cited his alleged misuse of administrative and judicial procedures as one of the grounds for his discharge in the letter proposing his discharge and as one of the grounds for its appeal in its letter of appeal to the Department of Economic and Employment Development.

After the April 17 memo, other employees made improper personal use of equipment of the employer and were disciplined, but none so severely as the claimant in this case.

One of the persons who used the equipment after the April 17 memo for a term paper exactly as was done by the claimant was granted approval of his use ~~after~~ the fact, even though he had not obtained the approval prior to using the equipment.

#### CONCLUSIONS OF LAW

The claimant has moved to dismiss the appeal of the employer for the reason that it discontinued its participation in the hearings at a time when it had agreed to produce documents which would show that the claimant's supervisor was illegally and unauthorizedly operating a gambling pool using the employer's computer equipment after the memorandum of April 17, 1987. Because of the actions of the employer in this regard and because the testimony, in general, including that of the claimant, I find that the claimant's supervisor did use the equipment after that date. I do not find, however, that this is a complete excuse to the claimant. On the contrary, I find that the claimant, a law student and now a lawyer, should have realized that he had the obligation to obtain personal approval from someone who was in a position to evaluate the situation objectively and give him that

approval before entering upon private use of the employer's computer equipment. The claimant had to be aware that his supervisor was illegally using the equipment and was, therefore, not in a position to objectively evaluate his request. Additionally, the claimant made no effort to obtain approval, even from his supervisor or any other person before embarking upon the use of the equipment without authorization for personal purposes. He argues that he had tacit approval because he was observed and his then fiancée, now wife, was observed using the equipment and no complaint was made by his supervisor. But I find that it was his obligation to get clear and specific authority for each use and that he did not do that, and by failing to do that, he did, in fact, violate the memorandum of April 17, 1987 and did thereby engage in acts of misconduct.

I cannot find in this case that there was gross misconduct because of the actions of the employer. Those actions included the actions of his immediate supervisor who was engaged in obviously unauthorized and possibly illegal conduct in the operation of a gambling game used in the employer's equipment, and because of the fact that his employer made it very clear that one of the items it took into account in discharging the claimant was his alleged misuse of administrative and judicial procedures. The claimant had a right to protect his rights and what he did has not been shown to be an abuse. The facts tend to show that he was successful on many occasions and there was real substance to his complaints and to his representation of his co-unionists. Were it not for these items, I would clearly find that the claimant's act was a deliberate and willful disregard of standards of behavior his employer had a right to expect, but because of the acts of the employer, I find that his acts were simply misconduct under Section 6(c) of the Law, and in fact, find that the determination of the Claims Examiner, in this case, was highly judicious and ought not be disturbed.

#### 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 unemployment insurance benefits for the week beginning January 3, 1988 and for four weeks immediately thereafter, ending on February 6, 1988.

The determination of the Claims Examiner is affirmed.

The appeal of the employer in this case is dismissed because of its failure to present evidence in support of its appeal and because of its failure to honor the processes and produce the documents which were subpoenaed. However, jurisdiction remains in the Hearing Examiner since this is a hearing de novo once an appeal is filed by either party and the appeal of the claimant was still valid and outstanding.

  
Martin A. Ferris  
Hearing Examiner

Date of hearing: 1/13/89  
amp/Specialist ID: 07199  
Cassette Nos. 2763, 2762, 4592, 4593, 6753  
Copies mailed on March 22, 1989 to:

Claimant  
Employer  
Unemployment insurance - College Park (MABS)

John R. Mooney, Esquire  
c/o Beins, Axelrod-Osborne

Myerle C. Hendricks, Jr., Esquire  
General Counsel  
United States Department of Justice  
Washington, D. C. 20030