

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS
THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
MAURICE E. DILL
Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

- DECISION -

Decision No.: 765-BE-84
Date: September 18, 1984

Claimant: Joe R. Cortez

Appeal No.: 13593
S. S. No.:

Employer: American Cooperage &
Steel Drum

LO. No.: 40
Appellant EMPLOYER

Issue:
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 ON October 18, 1984

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

EVALUATION OF EVIDENCE

The Board has made this decision based on the evidence taken before Appeals Referee Gerald E. Askin at the hearing date on March 14, 1984. At the previous hearing, on December 7, 1983, the employer was present, but the claimant had not been given

any notice of the hearing. For this reason, the second hearing was scheduled on March 14, 1984 and both parties were duly notified of that hearing. At that hearing, only the claimant appeared. The Board of Appeals scheduled an additional hearing on June 26, 1984 at which both parties would have had the opportunity to confront and cross-examine each other. Neither party appeared at that hearing, and the Board must make its decision based on the evidence presented at the hearing of March 14, 1984.

FINDINGS OF FACT

The claimant was employed as a full-time welder and maintenance mechanic from December 7, 1982 through March 31, 1983. The claimant had missed a great amount of time from work on account of personal problems. The employer, however, had acquiesced to these absences. Despite this fact, the claimant was discharged for these absences.

Since the employer acquiesced to the claimant's conduct in this case, it cannot be considered misconduct or gross misconduct within the meaning of §6(b) or §6(c) of the law.

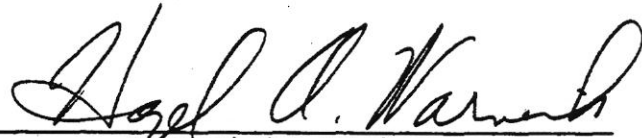
DECISION

The claimant was discharged, but not for misconduct connected with the work within the meaning of §6(b) or §6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on the claimant's separation from employment with American Cooperage and Steel Drum. The claimant may contact the local office concerning the other eligibility requirements of the law.

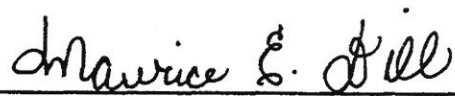
The decision of the Appeals Referee is affirmed.



Chairman



Associate Member



Associate Member

K:W:D

kbm

Date of Hearing: June 26, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383-5040

R E M A N D E D
 - DECISION -

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

DATE: March 29, 1984

CLAIMANT: Joe R. Cortez

APPEAL NO.: 13593-EP

S. S. NO.:

EMPLOYER: American Cooperage & Steel Drum
 c/o Automatic Data Processing

LO. NO.: 40

APPELLANT: Employer

ISSUE: 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

April 13, 1984

-APPEARANCES-

FOR THE CLAIMANT:

Joe R. Cortez - Claimant

FOR THE EMPLOYER:

Francis Womack -
 Automatic Data Processing

The claimant appeals hearing was originally set before Appeals Referee Gerald E. Askin on December 7, 1983 at 12:00 Noon at the Eastpoint Local Office. The claimant failed to appear at that hearing and the employer made an appearance being represented by Jim McAvoy, Hearing Representative, Automatic Data Processing, and Jack Layton, Vice-president. Based on the testimony before the Appeals Referee, the Appeals Referee reversed the Claims

Examiner's determination, which determination disqualified the claimant under Section 6(c) of the Maryland Unemployment Insurance Law. The claimant appealed the Appeals Referee's decision and the Board of Appeals has remanded the case for a new hearing based on the fact that the original appeals hearing notice showed an incorrect address for the claimant. The following decision is made pursuant to the Board's Remand Order.

FINDINGS OF FACT

The claimant began working for the employer, a cooperage firm, as a full-time welder and maintenance mechanic on December 7, 1982. His last day of work was March 31, 1983, when he was discharged by the employer.

The testimony and evidence reveal that prior to his discharge, the claimant was under a great deal of emotional distress due to the fact that his son was being charged in criminal proceedings for a very serious offense. The claimant felt compelled to absent himself from work to attend different proceedings and court hearings and trials.

The claimant had conversed with his employer about his problems and they acquiesced to his absences. However, the employer replaced the claimant by hiring another employee, and the claimant was separated from the employment.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, is not supported by the testimony before the Appeals Referee. Based on the testimony before the Appeals Referee at the second hearing, the Appeals Referee can find no evidence of any misconduct connected with the work on the part of the claimant. It is unfortunate that Mr. Layton, the Vice-president of the employing firm who was present at the first hearing, was not present at the second hearing. Therefore, the Appeals Referee must find that the claimant was separated from employment for a non-disqualifying reason within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged, but not for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is

imposed based upon the claimant's separation from employment with American Cooperage & Steel Drum. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

The Employer's Protest is denied.



Gerald E. Askin
APPEALS REFEREE

DATE OF REMANDED HEARING: March 14, 1984

ras

(1796 -- Sevier)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Eastpoint

Board of Appeals

Automatic Data Processing
ATTN: Francis Womack
Joppa Road @ Mylander Lane
Towson, Maryland 21204