



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.: 767-BH-89
Date: Sept. 8, 1989
Appeal No.: 8809957
S. S. No.:

Claimant: Brenda Chavis

Employer: Walter P. Carter Center
c/o State of Maryland
Dept. of Personnel
ATTN: Dorothy Ransom
301 W. Preston St., Rm. 510
Issue: Baltimore, MD 21201

L.O. No.: 1
Appellant: CLAIMANT

Whether the claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) 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.

October 8, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Brenda Chavis, Claimant
Julie Sweeney, Attorney
Richard Zeff, Attorney
Michele Gladdan, Witness
Philip Hoffman, Witness

FOR THE EMPLOYER:

Michael Coleman,
Personnel Officer
Bruce Boulware,
Maintenance Supvr.
Michael Gallagher,
Chief U. I. Unit

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. 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.

The claimant testified before the Board at the hearing held on June 20, 1989. During the course of her testimony, the claimant made allegations of sexual harassment by her immediate supervisor, Mr. Bruce Boulware. The Board does not find the testimony of Ms. Chavis to be credible and therefore finds that these acts of sexual harassment did not occur. This conclusion is based on the fact that the claimant's testimony, with regard to some of her allegations of sexual harassment was vague and unclear as to what exactly happened. The claimant's credibility was further damaged due to the fact that during the course of her testimony she professed to be an exemplary employee, never having experienced any disciplinary action. Credible evidence was presented to substantiate that the claimant was suspended on at least one occasion for falsifying a doctor's certificate. Upon this evidence being presented to the Board, the claimant remembered a five-day suspension in 1985; however, she indicated she could not remember why.

FINDINGS OF FACT

The claimant was employed by the Walter P. Carter Center from February 10, 1988 until July 22, 1988. The claimant came to hold the position of Office Secretary I as a result of a promotion to this position. Upon accepting this position, the claimant was placed on a 90-day probationary period.

The employer experienced many problems with the claimant during her initial probationary period. The claimant's attendance and job performance were poor, and she had a bad attitude. The claimant incurred sick leave, emergency leave, leave for job interviews, failed to properly notify her employer when she was required to be on jury duty, reported late for work and incurred incidents of leave without pay.

In addition to her attendance problem, the claimant's work performance was unsatisfactory. The claimant failed to develop a basic filing system, she could not adequately take phone messages, she failed to maintain employee work schedules and confidential files, her typing skills were inadequate for the job, she could not set margins and failed to proofread her work before sending out routine correspondence. The claimant

also could not work independently and required direct supervision. In addition to these problems, the claimant also displayed an unsatisfactory and negative attitude on those occasions when she was advised to improve her work or counseled regarding her attendance problem.

On April 15, 1988, the claimant's probationary period was extended another 90 days, from May 9 until August 9, 1988. This was done in order to give the claimant an opportunity to improve her work and attendance. Unfortunately, the claimant did not use this extended probationary period to improve her situation with the employer. She continued to incur excessive absenteeism and did not improve on her job performance as had been expected. Due to the claimant's failure to improve her attendance, her work performance and her attitude towards her job and her supervisor, she was rejected during her extended probationary period. The claimant resigned in lieu of being discharged while she was on extended probationary period.

CONCLUSIONS OF LAW

A resignation in lieu of discharge is treated as a discharge from employment within the meaning of the Maryland Unemployment Insurance Law.

The claimant was discharged during her extended probationary period because she failed to improve her attendance, her work performance, and her attitude towards management. The claimant's resignation in lieu of discharge clearly falls into the definition of gross misconduct connected with work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Gross misconduct is defined as conduct of an employee which is (1) a deliberate and willful disregard of standards of behavior which his employer has the 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 obligation. The claimant's actions and her failure to improve or cease this conduct during an extended probationary period that was afforded her clearly fall within the definition of gross misconduct as defined in Section 6(b) of the Maryland Unemployment Insurance Law.

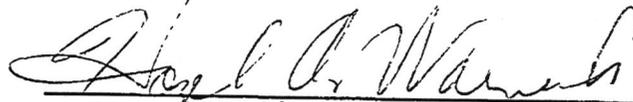
DECISION

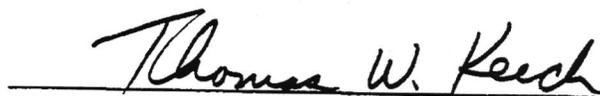
The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She disqualified from

receiving benefits from the week beginning July 17, 1988 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$1,980), and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.


Associate Member


Associate Member


Chairman

DW:W:K

kbm

Date of Hearing: June 20, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Richard D. Zeff, Esq.
Suite 100, St. Paul Square Bldg.
326 St. Paul Place
Baltimore, MD 21202

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

REMAND
- DECISION -

Claimant

Brenda Chavis

Date:

Mailed: 4/3/89

Appeal No.:

8809957

S. S. No.:

Employer:

State of MD/Walter P. Carter Ctr.

001

L.O. No.:

Employer

Appellant

Issue:

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 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 17, 1989

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

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Dorothy Ransom,
Assistant Chief
Unemployment
Insurance Unit
DOP;
Bruce Boulware,
Director of
Maintenance; &
Michael Coleman,
Personnel Director
Walter P. Carter
Center

FINDINGS OF FACT

The claimant worked at the Walter P. Carter Center from February 10, 1988 until July 22, 1988, as an Office Secretary I. She was earning \$6.25 per hour, and she was required to work 35.5 hours per week.

The claimant resigned in lieu of being discharged. The claimant was to be discharged after being rejected while on an extended probationary period in the classification of Office Secretary I.

The claimant accepted a promotion to the position of Office Secretary I, at the Walter P. Carter Center. Based on the State of Maryland personnel procedures, she was immediately placed on a three month, ninety day, probationary period.

From almost the beginning of her employment at the Walter P. Carter Center, the employer began experiencing problems with the claimant's attendance, job performance, and attitude. She incurred sick leave, emergency leave, leave incurred for job interviews, fail to properly notify the employer when she was required to be on jury duty, reported late for work and incurred incidents of leave without pay.

During her initial probationary period, certain aspects of the claimant's work performance were unsatisfactory. Specifically, she failed to maintain an adequate filing system, she failed to maintain current and accurate leave records of maintenance employees and she failed to properly accept telephone calls and messages.

In addition, during her initial probationary period, the claimant exhibited an unsatisfactory attitude towards management when counseled about her unsatisfactory work performance.

On April 15, 1988, the employer extended the claimant's probation for another ninety day period, from May 9, 1988 until August 9, 1988. Her probation was extended in order to afford the claimant the opportunity to improve on her deficient work related areas.

During the claimant's extended probationary period, she still incurred excessive absenteeism for sick leave, as well as time off to attend job interviews. Her typing skills still remained unprofessional, she had not developed a basic filing system, and

she was still unable to satisfactorily take telephone messages and conduct the employer's business on the telephone. It was determined by the employer that the claimant could not work independently in that she required more immediate supervision than was required in the position.

During her tenure of employment, the claimant was absent from her position, all or a portion of her work day, on thirty-five occasions out of a possible ninety-six working days. This represented 36% of some type of leave taken during her probationary periods. Because of the claimant's continued failure to improve her attendance, work performance and attitude towards management, her immediate supervisor, Bruce Boulware, implemented the necessary procedures to have the claimant rejected while she was on her extended probationary period.

The claimant resigned in lieu of being discharged while she was on an extended probationary period.

CONCLUSIONS OF LAW

A resignation in lieu of discharge is treated as a discharge from employment within the meaning of the Maryland Unemployment Insurance Law.

For purposes of this article, the term "gross misconduct," shall include conduct of an employee which is (1) a deliberate and 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. Misconduct not falling within this definition, shall not be considered gross misconduct.

The claimant was to be discharged after being rejected while on an extended probationary period, in the classification of Office Secretary I, for her continued failure to improve her attendance, work performance and attitude towards management. The claimant's resignation in lieu of discharge clearly falls within the above definition of gross misconduct connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Therefore, the Special Examiner will affirm the determination of the Claims Examiner within the meaning of Section 6(b) of the Maryland Unemployment Insurance Statute. The Special Examiner will, however, change the beginning date for the claimant's period of disqualification.

DECISION

The claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning July 17, 1988 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$1,980) and thereafter becomes unemployed through no fault of her own.

The decision of the Claims Examiner is affirmed.


Mark R. Wolf
Special Examiner

Date of hearing: 3/8/89
rch/Specialist ID: 01036/1845
Copies mailed on 4/3/89 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

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326 St. Paul Place
Baltimore, MD 21202