

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	816-BR-88	
	Date:	Sept. 9, 1988	
Claimant:	Cecil Ammons	Appeal No.:	8804550
		S. S. No.:	
Employer:	B & G Vending Company, Inc.	L. O. No.:	1
		Appellant	CLAIMANT
Issue:	Whether the claimant was discharged for gross misconduct, connected with his 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 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 9, 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the final decision of the Hearing Examiner, but does not agree with all the reasoning of the Hearing Examiner.

Conduct of an employee after discharge is not relevant to the reason for discharge and cannot support a penalty under Section 6(b) or 6(c) of the law. Williams v. Glen Arden Apartments (144-BR-84).

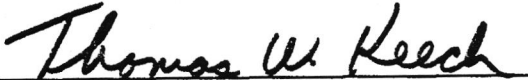
In this case, the claimant's apparent theft from the employer's machines at the Prince George's Center cannot be considered since the claimant was discharged prior to this incident even occurring, and the Board can consider only the reasons that were in existence at the time the decision to discharge was made.

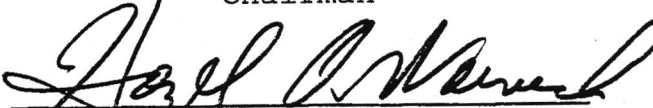
Even considering the actions of the claimant prior to the discharge, however, the Board concludes that the claimant committed gross misconduct. The Board interprets the Hearing Examiner's opinion as a finding of fact that the claimant was selling the employers merchandise to third parties without authorization, and the Board affirms that finding of fact. Selling the employer's materials to third parties without authorization is clearly a deliberate violation of standards the employer has a right to expect, showing a gross indifference to the employer's interests. This is gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

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. He is disqualified from receiving benefits from the week beginning February 21, 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 affirmed, but for the reasons stated in this opinion.


Chairman


Associate Member

K:H
kmb
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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schafer
Governor

--- DECISION ---

Date: Mailed July 14, 1988

Claimant : Cecil Ammons

Appeal No: 8804550

S.S.No.:

Employee: B & G Vending Company,
Incorporated

L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6 (a) of the Law.

Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02N.

- 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

July 29, 1988

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

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--- APPEARANCES ---

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by
Esther Fox,
President

For good cause shown in writing and testimony at the hearing, the claimant's appeal, heretofore dismissed, is, hereby, reopened.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Baltimore, effective February 28, 1988.

The claimant had been employed by B & G Vending Company, Incorporated for a period of nine months as a route salesman at a pay rate of \$200 per week until February 26, 1988. The claimant

was discharged for unauthorizedly selling the employer's merchandise to persons unknown, not customers or clients of the employer. The claimant had been observed by the employer's husband, in the course of his duties, traveling to Dundalk, a location to which he was not assigned, and there transacting his illegal business. The employer had received other unconfirmed reports of dishonesty on the part of the claimant. When the claimant was discharged, the keys to the vending machine was requested. The claimant did not return the keys. Subsequently, the employer learned from customer location that on Wednesday, April 20, 1988, the claimant had entered the customer's building, Prince Georges Center, signed his name on the log as a service representative of B & G Vending Company, and his signature on the log appears exactly with his endorsement on a company payroll check. Shortly thereafter, the employer learned that the vending machines at that location had been relieved of its cash. The matter is now being investigated by Prince Georges Police.

CONCLUSIONS OF LAW

Despite the claimant's denials of any wrongdoing, I conclude that the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6 (b) of the Maryland Unemployment Insurance Law. The claimant was observed in the course of his duties moving merchandise belonging to the employer from the employer's vehicle, carrying the same into an unauthorized location and returning to the vehicle without the merchandise. Further, the claimant had a duty, on February 26, 1988, to return the vending keys instructed to him at the time he was hired, which he failed to do. I further conclude that the signature on the security log at the Prince Georges Center is that of the claimant. Based upon the entire probative and substantial evidence presented, both before and after the date of termination, the employer's evidence is substantial and probative, showing that the claimant was discharged for misappropriation of company property, which constitutes gross misconduct connected with his work within the meaning of Section 6 (b) of the Maryland Unemployment Insurance Law.

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.

Benefits are denied for the week beginning February 21, 1988 and until the claimant becomes re-employed, earns at least ten times his weekly benefit amount (\$890), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.



Robin L. Brodinsky
HEARING EXAMINER

DATE OF HEARING - 7/8/88

cd

~~3186~~/Specialist ID-01036

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Claimant

Employer

Unemployment Insurance - Baltimore (MABS)