

 **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.:	853-BR-90
Date:	August 27, 1990
Claimant: Clarence C. Robinson	Appeal No.: 9001526
_____3	S. S. No.:
Employer: Realty Investment Co., Inc.	L O. No.: 1
c/o ADP/UCM Dept.	Appellant: EMPLOYER
ATTN : Gabrielle Allen	
_____ Lane	
Issue: Whether _____ was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) 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 September 26, 1990

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**- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board adopts the findings of fact made by the Hearing Examiner in his decision of July 9, 1990. Based on these facts, however, the Board concludes that the claimant was discharged for gross misconduct within the meaning of Section 6(b) of the law.

The claimant was on the premises but absent from his actual duty post (the building he was supposed to be cleaning) on December 4, 1989. He had time to clean the buildings but did not do so. When questioned by his supervisor, the claimant lied to his supervisor, informing him that he had cleaned the buildings.

The Hearing Examiner apparently found that the claimant committed only simple misconduct because he had an excuse for not cleaning the buildings. The excuse was that the buildings were infested with drug dealers and that the claimant had some fear for his physical safety in the buildings.

Although the claimant had a valid excuse for not cleaning the buildings on that particular day, there was no excuse for simply neglecting the problem and going to another area to pass the time. Even more significantly, there was absolutely no excuse for lying to his supervisor and stating that he had cleaned the building. The fact that the claimant lied to his supervisor calls into question the validity of the excuse itself -- but, even assuming that the excuse was valid, the claimant had a duty to report the problem rather than make it worse by pretending he had cleaned when he had not actually done so.

The claimant's lying to his supervisor about work that he was supposed to have performed was a deliberate violation of standards of conduct his employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct 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 December 3, 1989 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$990.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech  
Chairman

Donna P. Watts  
Associate Member

K:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner*  
*Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

*Telephone: 333-5040*

**— DECISION —**

	Date Mailed:	7/09/90
Claimant:	Clarence C. Robinson	Appeal No.: 9001526
	2030 Hollins Street	
	Baltimore, MD 21223	S. S. No.: 247-19-4910
Employer:	Realty Investment Co, Inc.	LO. No.: 01
	c/o ADP/UCM	
	Joppa Rd. at Mylander Ln.	Appellant: Employer
	Baltimore, MD 21204	

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 AND SUCH AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON **July 24, 1990**

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**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

EVIDENCE PRESENTED AND CONSIDERED

The employer testified that the claimant could not be located between 10:00 a.m. and 11:30 a.m. on December 4, 1989. Later, when the claimant was located, he informed the employer that he was in the building where he was supposed to be cleaning. The employer saw no evidence of such cleanliness. Later, the claimant said he was in another area, which was an area where he should not have been. However, the employer saw the claimant at 3:00 p.m. in the boiler room with the employee from the other area, and the employer determined that neither of them were in that other area.

The claimant's uncontradicted testimony showed that it often takes up to four hours to clean the grounds around the buildings, particularly on Mondays. The claimant was doing this, and he provided a report in writing to the employer that he had started working on building #324 at 12:16 p.m. and swept the floor. He did not clean any landing in that building, due to drug traffic. He next went to building #1512. There, he only swept some, but he did not go into the building due to drug traffickers there. At some point one of them had discharged a gun just before the claimant was going to clean there.

The claimant admitted that he had told the employer that he had cleaned the buildings assigned to him, which was untrue. He had done some sweeping, but he did not do any cleaning for the drug related reasons mentioned.

When the employer made the inspections, he concluded that by that time in the afternoon at least one of the buildings should have been cleaned, but neither had been cleaned.

#### FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Baltimore effective February 12, 1989. The claimant had been employed by Realty Investment Company, Inc. for about seven and a half months until December 4, 1989 as a janitor and grounds keeper at a pay rate of \$5.25 per hour.

The claimant was discharged for refusing to perform work.

There came a time when the property manager went in search of the claimant and could not find him in the area where he was to be working. Later, when the claimant was located, he informed the employer that he had been helping a co-worker in another area. However, the co-worker could not be found in that area either. When the claimant was asked whether or not he cleaned the buildings which the employer had inspected, he replied that he had. Upon being shown that the premises were not clean, the claimant informed the employer that he had been with a co-worker in another area. This also was untrue.

The buildings assigned to the claimant for cleaning were also known to be favorite locations for drug dealers and drug traffickers. The claimant would frequently discover or stumble upon "addicts shooting dope." The claimant would also encounter very tough and mean groups of men. On one occasion, the claimant came upon a small group of dope traffickers, one of them was brandishing a gun just fired into the wall. The claimant left that location swiftly.

However, the claimant had not complained to the property manager

concerning these incidents. The property manager admitted that at times there would be needles and syringes in the halls or landings, but the claimant's job was to clean and sweep these areas of debris.

I further find as fact that the claimant did not leave the premises without authorization on that day, but he did not clean the building to which he was assigned and told the employer that he had cleaned them.

I find as fact that there was adequate time to clean the buildings by the time the employer inspected them. I find as fact that the claimant did not clean any part of the buildings, but he did sweep an outer area.

I find as fact that the claimant left part of the building uncleaned, because he feared for his safety due to drug traffickers that he would come upon, and finding evidence of drug traffickers, and that one of them had been brandishing a gun previously.

#### CONCLUSIONS OF LAW

Upon weighing and reviewing the testimony presented, I conclude that the determination of the Claims Examiner was reasonably reached, and it shall be affirmed.

The claimant clearly failed to perform duties assigned to him, and refused to perform certain work. In addition there were times that the claimant could not be located by the property manager. However, the claimant explains why he failed to perform these duties, which was that he feared for his safety working in buildings frequented by drug traffickers, sometimes with weapons, and it would be ludicrous for him to politely ask them to move.

I further conclude that the claimant was dishonest in his response to the employer as to where he had been and his reason for failing to perform the duties assigned. The claimant's conduct demonstrates a deviation from the standard of conduct which the employer had a reasonable right to expect, showing "misconduct connected with his work" within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

#### DECISION

The claimant was discharged from employment for misconduct connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for

the week beginning December 3, 1989 and the four weeks immediately following.

  
Robin Brodinsky  
Hearing Examiner

Date of Hearing: 6/26/90  
alma/Specialist ID: 01037  
Cassette No: 1963  
Copies mailed on 7/09/90 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)  
Board of Appeals