



DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383-5032  
- DECISION -

STATE OF MARYLAND

HARRY HUGHES  
Governor

KALMAN R. HETTLEMAN  
Secretary

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 87-BH-83

DATE: January 24, 1983

APPEAL NO.: 11544

S.S. NO.:

CLAIMANT: Gregory Bass

EMPLOYER: Harbor Construction, Inc.

LONO.: 45

APPELLANT: EMPLOYER

ISSUE Whether the Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; or whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

February 23, 1983

**- APPEARANCES -**

FOR THE CLAIMANT:

Gregory Bass - Claimant

FOR THE EMPLOYER:

Ralph C. Dettor-  
President

**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 Employment Security Administration's documents in the appeal file.

The Board has accepted hearsay statements from the Employer stating that the Claimant removed shelving material from the work site, placed it in his car and took it for his own personal use. The Board has credited this testimony. In fact, the Claimant has admitted this much as true.

The real question in this case arose for the first time at the hearing before the Board of Appeals when the Claimant admitted taking the shelving but stated emphatically that he had permission to take it.

The Claimant has successfully explained why he did not raise the new issue until he came before the Board. Since the Employer admittedly did not tell him the reason he was fired, the Claimant had no opportunity, at first, to give his version of events to the Employer. On a later occasion, the Claimant was upset (when he found out he was accused of theft) and did not have any desire or reason to explain himself to his former Employer.

The Claimant's testimony concerning his reason for disclosing his version to the Employer is found convincing by the Board.

Concerning the merits of the case, the evidence is uncontradicted that the claimant, while in the process of removing shelving from a building he was working on and putting it in his car, turned and waved to two co-workers. This does not appear to be the act of a person attempting to steal his Employer's material.

In addition, the type of material taken by the Claimant does not match exactly the material which had been disappearing on a regular basis from the work site. Most importantly, the Claimant's testimony, that he had permission from the supervisor to take this Particular shelving material, outweighs the hearsay testimony that the supervisor, at some unstated later time, said that he knew nothing about it.

It must be noted that, in gross misconduct cases under Section 6(b) of the Law, the Employer has the burden of proof. In this case, in light of all the testimony in the record, the Employer has not met that burden by providing sufficient evidence that the Claimant did commit theft.

#### FINDINGS OF FACT

The Claimant was employed by Harbor Construction, Inc. from October 9, 1979 until July 22, 1982.

On or about July 16, 1982, the Claimant removed a piece of steel shelving from a building in which he was working, placed the steel shelving in his personal car on "the work site and removed it for his own personal use. The Claimant did have permission from the supervisor to remove this particular piece of shelving.

The Claimant was later terminated because of his Employer's belief that he had committed theft. This belief was never communicated to the Claimant until the beginning of the unemployment insurance proceedings.

#### CONCLUSIONS OF LAW

Since the Claimant had permission to take the property in question, his termination must be viewed as a result of an unfortunate misunderstanding rather than as a result of a criminal act of theft. Such a misunderstanding, of course, is not a disqualifying reason within the meaning of the Maryland Unemployment Insurance Law.

#### DECISION

The Claimant was discharged, but not for misconduct or gross misconduct within the meaning of §6(c) or (b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on the separation from employment with Harbor Construction, Inc.

The decision of the Appeals Referee is affirmed.

K:w  
Zs

DATE OF HEARING: January 11, 1983.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - PIMLICO