William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

—DECISION—

Decision No.: 881 -BH-91

Date: July 26, 1991

Claimant: Robin Tates

Appeal No.: 9101123

S. S. No.:

Employer: Robin George Davidson

L.O. No.: 1

Appellant: CLAIMANT

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

THE PERIOD FOR FILING AN APPEAL EXPIRES August 25, 1991

—APPEARANCES—

FOR THE CLAIMANT:

Robin Tates, Claimant
David Shapiro, Esquire

FOR THE EMPLOYER:

Robin George Davidson;
Patrice Davidson, Wife
Kathleen Dower,
Witness;
Darlene Strong,
Witness

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 the Department of Economic and Employment Development's documents in the appeal file.

The Hearing Examiner's decision was based in great part upon the employee's refusal to accept "counseling" from the employer. On appeal to the Board, the employer strongly denied attempting to counsel the claimant, and the Board agrees that the testimony is to this effect. The employer's argument is that the claimant's activities in themselves constituted misconduct.

FINDINGS OF FACT

The claimant worked as a hair stylist, earning $200 a week plus tips, from September of 1990 through December 14, 1990. She was discharged on the latter date.

The claimant freely discussed her personal life with her co-workers and with her employer, her employer's wife (who appeared to be the daily manager of the operation) and others. She became very good friends with these people, especially with her co-worker, Darlene Strong. The claimant's personal problems became complicated when she became pregnant and decided to have an abortion. This became common knowledge in the work place. The manager advised the claimant against having an abortion and offered to pay her doctor's bills and to schedule her work time around infant feeding times. With the manager's knowledge, Darlene Strong brought pictures in, presumably of aborted fetuses, in order to convince the claimant not to have an abortion. The manager informed the claimant's mother about this development, and the claimant then began to feel that the employer had betrayed her. She also felt that her friends had turned against her, and relations between her and all of her co-workers and her manager became extremely strained.

The claimant was technically a very good hair stylist, but very few of her customers returned. The claimant did engage the customers in personal conversations, even extending, on at least one occasion, to discussing her prospective abortion with a customer. The claimant had been encouraged to talk on a friendly basis with customers, but not to the extent of discussing these extremely personal matters. When the owner began to notice that the claimant had few returning customers, he asked the claimant about this. When doing so, he went to

great pains to avoid discussing the extremely personal subject of her abortion. Personally, he believed that the claimant's discussing of this was a possible reason for her customers not returning in great numbers, but she was not specifically warned not to do this at that meeting.

Relations between the claimant and the other workers remained strained, and she ceased going to work in a carpool with Darlene Strong, who had previously been a close friend. The claimant even spoke about the possibility of suing her employer, although the cause of action was not ever stated.

When the claimant had her abortion, Darlene Strong, despite her personal objections to the procedure, accompanied the claimant in order to try to help her through it. When the claimant attempted to return to work a few weeks later, she was discharged.

CONCLUSIONS OF LAW

In a discharge case, the burden is on the employer to show that the claimant committed misconduct or gross misconduct within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law.

The first reason which the employer gave as an example of misconduct was an allegation that the claimant was harassing other employees. There is insufficient evidence of this. It is obviously true that relations were strained between the claimant and the other employees. These relationships became strained because of serious personal differences of opinion concerning what was right and wrong. The other employees were disappointed by the claimant's decision, and the claimant felt that the other employees and the manager had betrayed her and were harassing her about this decision. All of the personal relationships became strained, but there is no evidence that the claimant was harassing the other employees. A termination of a personal relationship of friendship with a co-worker simply does not constitute harassment, nor is it misconduct within the meaning of Section 6 of the law.

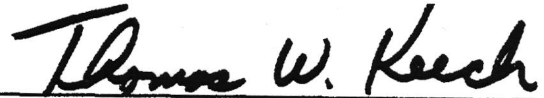
A more specific allegation is that the claimant talked inappropriately of these extremely personal matters with customers. It is true that the claimant was encouraged to talk in a friendly manner with customers, but talking of these extremely personal matters with them was clearly inappropriate. This could constitute misconduct in some cases, but it is clear to the Board that the claimant was never specifically warned about this. Perhaps because the employer was attempting to delicately sidestep the issue of the claimant's personal beliefs and actions, she was never simply told to

stop discussing these personal details of her life with customers. The claimant did display poor judgment in discussing these intimate matters with her customers; but, since she was never specifically told to stop doing it, this poor judgment cannot be said to amount to misconduct within the meaning of the Unemployment Insurance Law.

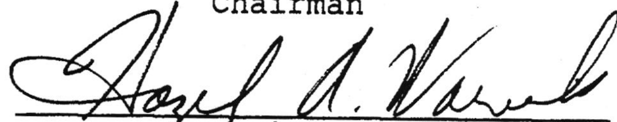
DECISION

The claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with Robin George Davidson.

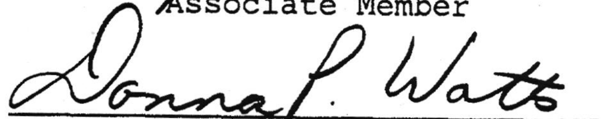
The decision of the Hearing Examiner is reversed.



Chairman



Associate Member



Associate Member

K:W:W
kbm
Date of Hearing: May 28, 1991
COPIES MAILED TO:

CLAIMANT

EMPLOYER

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Baltimore, MD 21202

UNEMPLOYMENT INSURANCE - BALTIMORE

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

— DECISION —

		Date: Mailed:	02/15/91
Claimant:	Robin A. Tates	Appeal No.:	9101123
		S. S. No.:	
Employer:	Robin George Davisdon	L.O. No.:	01
		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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON March 4, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present;
David E. Shapiro, Esquire/Witness;
Joyce Coleman, Witness

FOR THE EMPLOYER:

Patrice Davidson,
Robert Davidson,
Co-owners

FINDINGS OF FACT

The claimant was employed by Robin George Davidson and his wife on September, 1990 until discharged December 14, 1990. She was a hair stylist earning approximately $200 a week.

The claimant revealed personal matters to clients and customers of the ladies hair salon. These revelations were inappropriate according to the employer and caused customer complaints. The

claimant was told to decease from such matters and also, at least on two occasions, she was requested to come to a counseling session, which she refused to do. The claimant also threatened to sue the employer and subpoena the co-worker. After this, the employer discharged the claimant.

CONCLUSIONS OF LAW

In the case of Merritt v. Tri-State Oil Company, 1192-BH-83, the Board held claimant's deliberate ignoring of employer's instructions to off-load barges constitutes gross misconduct.

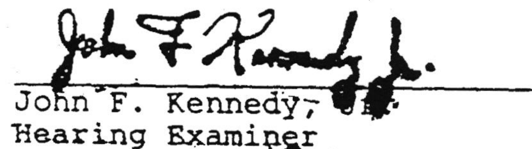
In the case of Thomas v. Speed - Rite Installation Company, Inc. 280-BH-84, the Board held claimant walked off job site when his job was not finished after being given direct orders by the company's owner and manager to remain and complete the job. Held: Gross misconduct.

It is concluded that the claimant's refusal to meet with the employer in counseling sessions on two occasions and her threat of a law suit and subpoenaing of co-workers constituted gross misconduct, connected with the work. The determination of the Claims Examiner will be reversed.

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 benefit from the week beginning December 9, 1990 until she becomes re-employed and earns at least ten times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.



John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: 02/11/91
alma/Specialist ID: 01027
Cassette No: 943 & 1257
Copies mailed on 02/15/91 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

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