



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.:	885-BH-91
	Date:	July 26 , 1991
Claimant:	Leon Parker	Appeal No.: 9100761
	S. S. No.:	
Employer:	Greater Baltimore Medical Ctn. L.O. No.: 45	
	ATTN: Martin Dwyer, Empl. Labor Relations Coordinator	Appellant: EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the 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:

Leon Parker - Claimant

FOR THE EMPLOYER:

Martin Dwyer -
Employee Labor
Relations
Coordinator

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 Board did not find the claimant to be credible.

FINDINGS OF FACT

The claimant was employed with Greater Baltimore Medical Center as a security officer from approximately January, 1986 until he was discharged on or about November 30, 1990.

The claimant had a series of incidents involving alcohol abuse that culminated, in September of 1990 with his being required to join the employer's employee assistance program in lieu of termination.

The first incident was in September of 1988 when he was verbally warned after coming to work having alcohol on his breath. In July of 1989 he was again discovered to have alcohol on his breath while at work. At that time he was offered treatment with the employee's assistance program, but he refused treatment. He was warned by his employer that any further incidents could result in termination. Between that time and the next incident in 1990 the employer greatly improved its employee assistance program and all the employees, including the claimant, were notified of this new program which offered help to employees who had drinking, drug and other problems.

On September 21, 1990, the claimant was found to be under the influence of alcohol while at work. He was offered the chance to go to the employee's assistance program in lieu of termination, and the claimant agreed to join this program. He understood and agreed in writing that he must abide by all the rules of the program and remain free of all drugs and alcohol or he would be immediately terminated. It was decided by the program that the claimant would be sent to Mainstream, an outpatient program, and would attend AA meetings three times a week. As part of his agreement with the employer and his agreement with the treatment program, both the employer and the treatment program had the right to test the claimant for alcohol and drugs at any given time.

In November of 1990, as part of its regular treatment program, Mainstream tested the claimant and found that he tested positive for alcohol. This was a violation of his agreement with the treatment program. As a result, the employer discharged the claimant. The claimant did not deny his use of alcohol but felt that one mistake shouldn't result in his job being terminated. However, the employer had already given him several chances.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Law. The claimant engaged in a series of incidents involving his reporting to work under the influence of alcohol, which was a violation of the employer's rules. In September, the employer gave him a chance to go into treatment in lieu of termination, but part of that agreement was that if the claimant did not abide by the rules of the treatment program, he would be fired.

The claimant violated a rule of the treatment program, which was discovered by his testing positive for alcohol. Therefore, the claimant was terminated. His actions clearly show a deliberate and willful disregard of standards of behavior which the employer had a right to expect and is gross misconduct under Section 6(b) of the Law.

The Hearing Examiner found that the employer did not meet the requirements of Section 17-214.1 (c)(iv) of the Health General Article of the Annotated Code of Maryland, which states what rights employees have when their employer discharges them for testing positive on a drug test administered by the employer. The Board has held that, where an employee is fired because of failing such a test administered by the employer, and where the employer did not abide by this statute, a finding of gross misconduct is not supported. However, in this case, the employer did not administer the test and did not itself require the employee to be tested. The employer required that the claimant abide by the rules of the treatment program. The claimant was fired by the employer for not keeping his part of the bargain and violating a rule of the treatment program. Therefore, the Board does not find that this section of the Health General Code applicable here.


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 November 25, 1990 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,830.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member


Chairman

H:D:K

kmb

DATE OF HEARING: June 4, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



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 —

Claimant:	Leon L. Parker	Date: Mailed:	02/14/91
		Appeal No.:	9100761
		S. S. No.:	
Employer:	Greater Baltimore Medical Center Personnel Department	L.O. No.:	45
		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 1, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Martin Dwyer,
Employer & Labor
Relations
Coordinator

FINDINGS OF FACT

The claimant was employed by the Greater Baltimore Medical Center on January 23, 1986. At the time of his separation from employment on November 30, 1990, he earned \$18,000. a year as a security officer.

In 1988, the claimant was accused of reporting to work

intoxicated. The claimant was not intoxicated, but had been drinking approximately eight hours before he reported to work.

In September of 1990, the claimant was suspended for two days because the employer thought that he was intoxicated. The claimant, who is diabetic, was suffering from low blood sugar and was treated in the hospital's emergency room. The claimant's symptoms make him appear to be intoxicated. When the claimant reported to work after the suspension, he was told to either sign an agreement requiring him to enter drug treatment and to be tested for alcohol or drugs periodically or be discharged. The claimant signed the agreement to avoid termination. On November 30, 1990, the claimant was discharged for testing positive for marijuana. The claimant had not been smoking marijuana but stated that he was in a car with people who had been smoking. The claimant never received a copy of the test results.

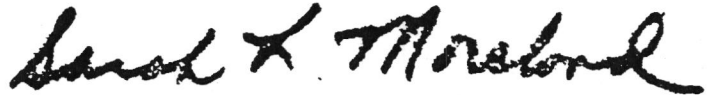
CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. In this case, the employer has failed to meet its burden of proving that the claimant was discharged for conduct that constitutes gross misconduct connected with his work, within the meaning of Section 6(b) of the Law.

The Board of Appeals has held that when an employer discharges an employee for testing positive on a drug test, the employer must meet the requirements of Section 17-214.1(c) (iv) of the Annotated Code of Maryland, Health General Article. This section of the Law provides that the employer, after having required an employee to be tested for the use or abuse of any controlled dangerous substance, and who receives notice that the employee has tested positive, after confirmation of that test result, shall provide the employee with a statement or copy of section (d) of this section, permitting the employee to request independent testing of the same sample for verification of the test results. Section (d) of this section reads as follows: Section (d) verification of test results - (1) A person who is required to submit to job-related testing, under subsection (b) of this section, may request independent testing of the same sample for verification of the test results by a laboratory that: (i) holds a permit under this subtitle; or (ii) if located outside of the state, is certified or otherwise approved under subsection (d) of this section. (2) The person shall pay the cost of an independent test conducted under this subsection. In this case, since the employer failed to meet the requirements of the Law, denying the claimant an opportunity to be retested, it is concluded that the claimant was discharged for no misconduct, within the meaning of Section 6(b) or 6(c) of the Law.

DECISION

The claimant was discharged for reasons that do not constitute misconduct or gross misconduct connected with his work, within the meaning of Section 6(b) or 6(c) of the Law. Benefits are allowed provided the claimant is otherwise eligible. The Claims Examiner's determination is reversed.



~~Sarah Moreland~~
Hearing Examiner

Date of Hearing: 02/06/91
alma/Specialist ID: 45555
Cassette No: 1118
Copies mailed on 02/14/91 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)