

# DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND  
HARRY HUGHES  
Governor

BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(301) 383-5032

## BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

MARK R. WOLF  
Chief Hearing Examiner

### — DECISION —

	Decision No.:	89-BR-85	
	Date:	February 22, 1985	
Claimant:	Michael J. Finn	Appeal No.:	10652
		S. S. No.:	
Employer:	Sheraton Washington Hotel	LO. No.:	7
	ATTN : Gary Budge, Area Director of Food & Beverages	Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for misconduct, connected with the work, within the meaning of § 6(c) of the law; and 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 MAYBE 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 ON

March 24, 1985

### — 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 Appeals Referee.

The Appeals Referee found that the claimant was not capable of doing the job, and therefore his deficiencies in job performance were not "misconduct." While many of the claimant's job deficiencies may have been due to certain inabilities on his part, many of his problems were caused by a simple failure of the claimant to complete simple tasks required by management, such as keeping equipment out of the fire lane and having the dishwasher water changed every four hours. The claimant had a sufficient staff to do these jobs. When the employer has shown that duties as simple as these are not performed (and where there is a showing of adequate staff and resources to do these duties) the burden shifts to the claimant to explain why he was unable to perform them. The claimant did not show why he could not perform these simple tasks. The claimant has failed to meet that burden.

The employer, however, has failed to show that the claimant's conduct was deliberate or that the claimant wantonly disregarded his obligations. Therefore, the standard of § 6(b) (gross misconduct) is not met.

DECISION

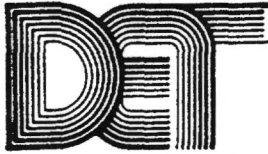
The claimant was discharged for misconduct, connected with the work, within the meaning of § 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 30, 1984 and the six weeks immediately following.

The decision of the Appeals Referee is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation, unless the claimant has been employed after the date of the disqualification.

  
Chairman

  
Associate Member



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SEVERN E. LANIER  
Appeals Counsel**

**— DECISION —**

**Date:** Mailed 10/22/84

**Claimant:** Michael J. Finn      **Appeal No.:** 10652-EP

**S. S. No.:**

**Employer:** Sheraton Washington Hotel      **L.O. No.:** 07

**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 TO PETITION FOR REVIEW —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON **November 7, 1984**

**— APPEARANCES —**

**FOR THE CLAIMANT:**

NOT PRESENT

**FOR THE EMPLOYER:**

Represented by Gary Budge, Area Director of Food & Beverage; and Chris Page, Gates, McDonald

**FINDINGS OF FACT**

The claimant filed an original claim for unemployment insurance benefits at College Park, effective August 12, 1984.

The claimant had been employed by Sheraton Washington Hotel from December 1, 1983 through July 30, 1984, in the last position as

Executive Steward, at a pay rate of \$20,000 per year.

Before becoming the Executive Steward, the claimant had been the Assistant Executive Steward for a period of three months, and received training for that work. The claimant was discharged, because, in the opinion of the employer, he was unable to follow and carry out company policies and procedures relative to his responsibilities as the food and beverage manager. The work was not being completed to the specifications and expectations of the employer. The employer concluded that the claimant had the intelligence and the capability of doing the work, but for reasons which were at times unexplainable, the employer found that the claimant was not carrying out the responsibilities of his position effectively. The employer concluded that the claimant was not the right person for the job.

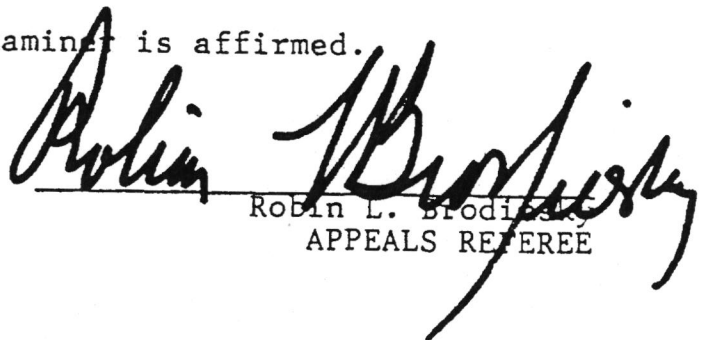
CONCLUSIONS OF LAW

Although the employer has set forth certain deficiencies in the claimant's work performance, the employer has not presented substantial evidence of sufficient preponderance to establish that the claimant's conduct or work performance constituted "misconduct connected with his work" within the meaning of Section 6 (c) of the Maryland Unemployment Insurance Law. Therefore, where there is an inference of wrongdoing, the evidence must be weighed in a light most favorable to the claimant, and against the moving party who seeks to have an administrative decision overruled. Accordingly, it is concluded that the determination of the Claims Examiner was warranted, in conformity with the Law, and shall be affirmed.

DECISION

The claimant was discharged, but not for misconduct connected with his work, within the meaning of Section 6 (c) of the Law. No disqualification is imposed, based on his separation from employment with Sheraton Washington Hotel. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.

  
Robin L. Brodsky  
APPEALS REFEREE

Date of Hearing - 10/10/84  
cd/4518  
(7497/Mayfield)

COPIES MAILED TO:

CLAIMANT

EMPLOYER

GATES. MCDONALD

ATTN: Jacqueline Jones

UNEMPLOYMENT INSURANCE - COLLEGE PARK

COPIES MAILED ON 10/22/84 TO:

Claimant  
Employer  
Unemployment Insurance - College Park

Gates, McDonald  
ATTN: Chris Page