



# 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.: 904-BH-89

Date: October 19, 1989

Claimant: Timotheous T. Fitzgerald

Appeal No.: 8904036

S. S. No.:

Employer: Martens Motors, Inc.  
ATTN: Matthew Mintz,  
General Sales Manager

L. O. No.: 7

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.

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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 November 18, 1989

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— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

William Long -  
Treasurer

## 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.

## FINDINGS OF FACT

The claimant was employed by Martens Motors, Inc. as an automobile salesperson from approximately April, 1988 until he was discharged on or about March 20, 1989.

One of the requirements for working as a salesperson for the employer is that the person must be able to be bonded by the employer's insurance company. At the time the claimant was hired, he informed the employer that he had previously been convicted of a criminal offense, breaking and entering, in September of 1987 and was currently on probation as a result of that conviction. Despite this conviction, the claimant was able to be hired and bonded by the employer's insurance company.

On or about March 3, 1989, the claimant went on an approved leave of absence with the company, ostensibly in order to fulfill his 100 hours of community service that was one of his conditions of probation. On or about March 7, 1989, however the claimant was arrested for armed robbery. When the employer learned of this arrest, they had some discussion with their insurance agent who assured them that the claimant's bond would be revoked as soon as the insurance company learned of the claimant's arrest. Consequently, the claimant was discharged by the employer. Although the employer had some other minor problems with the claimant's performance, generally he was considered a good salesman and it is conceded by the employer that the only reason he was discharged was because he could no longer be bonded by the insurance company. The claimant had not been convicted at the time he was discharged and, at the time of the hearing before the Board, his trial was still ongoing and no final resolution had been reached.

## CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for reasons that do not amount to gross misconduct or misconduct, under Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. There is no evidence of any actual misconduct on the part of the claimant. The fact that he was arrested, by itself, is not evidence of any wrongdoing. The Board cannot presume, as the insurance company apparently did, that the

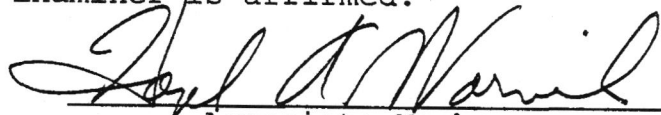
claimant participated in the armed robbery because he was arrested for it. He was discharged because he could no longer be bonded by the employer's insurance company. While this action on the part of the employer is understandable, it is not for a reason that is disqualifying under the unemployment insurance law.

Further, the Board does not find this to be a case of constructive voluntary quit because there is insufficient evidence that the claimant did, in fact, voluntarily commit an act, namely the armed robbery, that he knew or should have known would lead to his discharge. See, e.g., Holmes v. Nuclear Regulatory Commission, 887-SE-84=

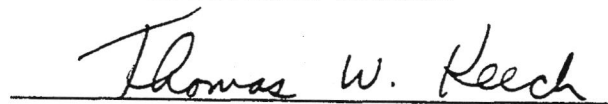
#### DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with Martens Motors, Inc. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is affirmed.

  
Associate Member

  
Associate Member

  
Chairman

H:D:K

kmb

DATE OF HEARING: September 19, 1989

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1. The evidence is inconclusive as to whether the second requirement of constructive voluntary quit is met here, namely that the employer legally had no choice but to terminate the claimant. However, since the Board has found that the other part of the requirement of constructive voluntary quit is not met, there is no need to reach this issue in this case.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



# Maryland

## Department of Economic & Employment Development

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

1100 North Eutaw Street  
Baltimore, Maryland  
21201

(301) 333-5040

### -DECISION-

Claimant:	Timotheous T. Fitzgerald	Date:	Mailed: 5/4/89
		Appeal No.:	8904036
		S. S. No.:	
Employer:	Martens Motors, Inc.	LO. No.:	007
		Appellant:	Employer
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 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

May 19, 1989

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### —APPEARANCES -

FOR THE CLAIMANT:

Timotheous Fitzgerald - Present

FOR THE EMPLOYER:

Matthew Mintz,  
General Sales  
Manager

### FINDINGS OF FACT

The claimant had been employed by Martens Motors, Inc., from April 11, 1988 to March 20, 1989, as a Nissan Salesperson. The salespeople at Martens Motors, Inc. have to be bonded to work as automobile salespeople.

When the claimant was hired at Martens Motors, Inc., the claimant advised his employer that he had been convicted of the crime of breaking and entering in September of 1987.

Due to the conviction in September of 1987, the claimant was placed on probation and he had to perform 100 hours of community service and make restitution. The claimant requested from Martens Motors, Inc., to take a two week's leave of absence from March 3, 1989 to March 16, 1989, so the claimant could perform 88 hours of community service for his prior conviction in September of 1987. On March 7, 1989, at approximately 10:30 p.m., the claimant was arrested for Armed Robbery. The claimant has not gone to trial for the arrest for Armed Robbery. The claimant was terminated by Martens Motors, Inc. on March 20, 1989, because the employer concluded that the claimant would no longer be bonded by the bonding company. Martens Motors, Inc. has not submitted any documentation to show that the claimant was unable to be bonded by their bonding company. On March 20, 1989, the claimant was given a document, Claimant's Exhibit #1, which indicated that the claimant was discharged due to the "loss of fidelity bond."

#### CONCLUSIONS OF LAW

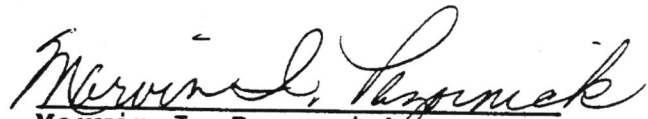

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

#### DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on the claimant's separation from his employment with Martens Motors, Inc.

The claimant may contact his local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.

  
Marvin I. Pazornick  
Hearing Examiner 

Date of hearing: 5/2/89  
rch/Specialist ID: 07205  
Cassette #: 3453B - 3455A  
Copies mailed on 5/4/89 to:

Claimant  
Employer  
Unemployment Insurance - College Park (MABS)