

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 912-BR-87
Date: Dec. 28, 1987
Claimant: Michael Anderson
Appeal No.: 8702450
S. S. No.:
Employer: Chem Clear, Inc.
c/o Automatic Data Processing
L.O. No.: 1
Appellant: EMPLOYER
Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

January 27, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner and concludes that the claimant was discharged for gross misconduct within the meaning of Section 6(b).

The Board disagrees with the Hearing Examiner's conclusion that the claimant was discharged because of his union activities. The preponderance of the evidence, documentary and testimony, is that the claimant was fired for a series of incidents including: (1) negligent operation of equipment; (2) insubordination toward a supervisor; (3) refusing to follow the reasonable instruction of a supervisor; (4) leaving his work station early, without permission; and (5) 22 incidents of lateness within a 90-day period.

Where a claimant alleges that the reasons for discharge, though objectively based, are nevertheless just a pretext for an underlying discriminatory motive, the claimant has the burden of showing that the objective reasons proven were really just a pretext. Adegbesan v. The Arundel Corporation, 322-BH-85.

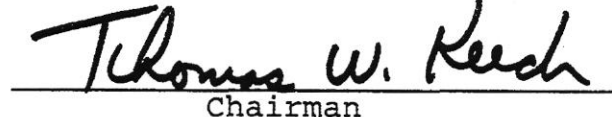
The claimant here has failed to meet that burden. He has produced only the vaguest, most subjective evidence of his union activity and any connection of that activity with his discharge. Therefore, the decision of the Hearing Examiner must be reversed.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning January 18, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,950) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kbm

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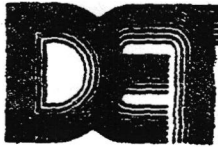
CLAIMANT

EMPLOYER

Frank S. Solomon, Esq.
605 Baltimore Avenue
Towson, MD 21204

Don Benter, Esq.
Benter, Carter & Mervis
900 Reisterstown Road
Pikesville, MD 21208

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

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BOARD OF APPEALS

THOMAS W. KEECH
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HAZEL A. WARNICK

Associate Members

SEVERN E. LANIER

Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

—DECISION—

Mailed: 9/29/87

Date: 8702450

Appeal No.:

S.S. No.:

Claimant: Michael Anderson

1

Employer: Chem Clear, Inc.
c/o Automatic Data Processing

L.O. No.:

Appellant:

Claimant

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 EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201. EITHER IN PERSON OR BY MAIL

10/14/87

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
Don Benter, Esquire

Frank S. Solomon,
Esquire,
Lawrence Slattery,
Project Manager

FINDINGS OF FACT

From August 16, 1984 to January 18, 1987, the claimant worked as a Press Operator earning \$8 per hour.

The employer is non-unionized. The claimant was a union organizer. Most of the organizing activities were conducted off company property until January or February 1986, when an effort was made to reach workers on the job.

Beginning, in January or February 1986, from time to time management questioned the claimant's co-workers about his union activities and started to scrutinize his work closer. On more than one occasion the foreman came to the job site and quizzed the claimant about his duties. When the claimant went to cast his vote for the union in December 1986, Ronnie Lester, a foreman, told him that he had heard that he was a ring leader in organizing the union.

The claimant was late twenty-two times within a period of five months beginning in January 1986. On October 15, 1986 he received a warning for tardiness and sub-standard performance. On October 30, 1986, he received a warning for carelessness in transferring oil to another tank which caused an overflow. On January 12, 1987, he received a warning for failing to follow sludge treatment procedures. However, his discharge for these reasons was simply a pretext. He was, in fact, discharged because of his union activities.

EVALUATION OF THE EVIDENCE

The employer testified that the claimant has a pattern of absenteeism and misconduct before January 1986, but did not present supporting documentation. The employer did present documentation of tardiness beginning in January 1986, but could not prove the amount of time missed. Finally, the employers interest in the claimant's union activities commenced about the same time that the employer began to scrutinize the claimant's performance. The circumstances and totality of the evidence decreases the employers credibility and leads to the conclusion that the claimant's discharge for misconduct was simply a pretext.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during the hours of employment or on the employer's premises. Rogers v. Radio Shack, 271 Md. 226, 314 Atlantic 2nd 113 1974.

Under Section 6(b) of the Law "gross misconduct" shall include conduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which his employer has a

right to-expect, showing a gross indifference to the employer's interest, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations. Conduct not falling within this definition shall not be considered "gross misconduct." While the claimant was tardy on several occasions and guilty of other misconduct, he was not discharged for misconduct, but was in fact, discharged because of his union activities.

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 his separation from his employment with Chem Clear, Inc. The claimant may contact his local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

The denial of benefits beginning January 18, 1987, and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount of \$1,950, is rescinded.


Van D. Caldwell
Hearing Examiner

Date of hearing: 5/8/87

rc

(2744 & 2745)-Culmer

Copies mailed on 9/29/87 to:

Claimant
Employer
Unemployment Insurance - Baltimore - MABS

Board of Appeals

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