

 **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.:	975-BH-89	
	Date:	November 6, 1989	
Claimant:	Ronald Robinson	Appeal No.:	8705176
		S. S. No.:	
Employer:	United States Fidelity and Guaranty Company	L O. No.:	45
		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 MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT 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 December 6, 1989

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**— APPEARANCES —**

FOR THE CLAIMANT:

Ronald Robinson - Claimant  
Edward Smith - Attorney

FOR THE EMPLOYER:

Debra Markwitz -  
Attorney

## PROCEDURAL STATEMENT

This case has gone through the administrative process twice before. The first time, both the Hearing Examiner and the Board concluded that the claimant, by failing to show for work on a day for which he did not have leave, committed gross misconduct within the meaning of Section 6(b) of the law and should be disqualified from the receipt of benefits. The case went to the Circuit Court for Baltimore City, which remanded it because the transcript of the hearing was either inaudible or missing.

A de novo hearing was held before a different Hearing Examiner. After that hearing, the Hearing Examiner ruled that the claimant had missed work, but that he had done so for a sincere religious reason and that he could not be disqualified for being discharged for missing work on that day. The Board affirmed that decision. also. upon further appeal to the Circuit Court, the transcript of the original hearing was discovered. This case was then remanded for a second time to the Board by the Circuit Court, this time for the purpose of considering the transcripts of both hearings and listening to legal argument prior to rendering a new decision.

Although the Court gave the Board the option of hearing additional evidence after the legal arguments were concluded, the Board concludes that this is not necessary and will make a decision based on the two transcripts in the record.

At legal argument, the claimant's attorney argued that the Circuit Court had no authority to remand the case. The employer's attorney argued that the Board should actually consider only the first transcript. These are both arguments which should be addressed to the Circuit Court and not to the Board. The Board is, of course, required to obey the order of the Circuit Court, which was quite specific in this case.

Upon reviewing both transcripts, the Board affirms the decision of Hearing Examiner Hordes, reached on August 10, 1988, finding that the claimant missed work for sincere religious reasons, and that his discharge was not for any misconduct within the meaning of the unemployment insurance law.

The crucial issue in this case was the reason that the claimant failed to appear for work on Easter Sunday in 1987. The fact that he didn't show for work and the fact that he did not have permission to miss work, and the fact that he was aware that he did not have permission are not really contested. It was also not contested that the claimant asked for permission many weeks in advance and that both he and his supervisor made at least some efforts to obtain a replacement for him for that day, but that no arrangement acceptable to the supervisor could be made.

The employer's attorney argues that the transcripts show that the claimant did not really propound a religious reason for missing work that day -- until at the second hearing, after he was represented by counsel. The argument is that there are inconsistencies between the transcripts and that the religious reason for leaving work was an excuse developed only at the time of the second hearing.

It is true that the claimant did not emphasize a religious reason for wanting the day off when he spoke at the first hearing. The first Hearing Examiner's decision [Tr. 58-61] does not even mention an alleged religious reason for wanting the day off. The Board, in its affirmance of the first Hearing Examiner's decision [Tr. 70-71] did not notice or mention the religious reason. This possibly could have occurred because the focus of the hearing and the decision was on the mechanics of the situation, i.e., the company's policy, the claimant's normal shift, the company's procedures for requesting time off, the supervisor's attempt to find a replacement and the reasonableness of the supervisor's rejection of the claimant's proposed alternative. The fact remains, however, that the claimant's first words at the hearing with respect to why he wanted Easter Sunday off were:

I told her I was going to church and I had mailed out invitations to family members to have them come over after church. [Tr. 28]

[emphasis supplied]

At the second hearing, when specifically asked which was the most important reason for wanting to be off work, the claimant stated that going to church was the most important reason. [Tr. 118]

It is true that the claimant certainly did not emphasize at the first hearing that his primary reason was the attendance at church. It is also true, however, that no one asked him this question at the first hearing. The first reason that the claimant gave at the first hearing for wanting to be off on Easter Sunday was to go to church, and the Board cannot quibble with the fact that this issue was not developed, given the failure of anyone to ask or question the claimant about it.

There is some inconsistency in the claimant's testimony about his family gathering on Easter Sunday. In the statement quoted above, the claimant stated at the first hearing that he had mailed out invitations to family members, while at the second hearing he stated that he asked permission early (February 22) "so I would have enough time to send the invitations." [Tr. 116] The Board regard this minor inconsistency as sufficient enough to question the claimant's credibility with respect to his primarily religious motivations for seeking the day off.

The employer, having stipulated that the claimant is a man of sincere religious conviction, sought to prove nevertheless that these religious convictions did not motivate the claimant's request for the day off. The employer, however, has no strong evidence to refute the claimant's testimony that religious reasons were his primary motivation. Religious reasons do not have to be logical, consistent, or required by any particular sect in order for them to receive the protection of the First Amendment in an unemployment insurance context. Thomas v. Review Board of Indiana, 101 s. ct. 1425 (1981). The fact that the claimant had worked on previous Easter Sundays without complaint does not refute the fact that he felt it religiously important for him to attend services on this particular Easter Sunday. (This evidence may have been used in an attempt to refute the sincerity of the claimant's religious conviction, but the sincerity was stipulated.) The fact that the claimant's convictions may have arisen subsequent to working on prior Easter Sundays or that he may have just violated his convictions and suffered the guilt of doing so on previous Easter Sundays, does not take away his rights to observe his present religious convictions at the present time. Having conceded the claimant's sincere religious beliefs, the employer was hard pressed to demonstrate that the claimant's religious belief was not what he said it was. The employer did not manage to do so, and the Board will rule, as did the second Hearing Examiner and the Board on a previous occasion [Tr. 152-155, 162-163], that the claimant was required to take this particular Easter Holiday off due to his religious convictions.

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1 The employer's best point is perhaps that the claimant could have worked for a few hours prior to attending church on that Easter Sunday morning. This point, however, was not adequately developed. It is not at all apparent, for example, that the claimant would not have been fired anyway for leaving after a few hours of his shift. It appears that what happened at the workplace was in a sense repeated at the hearing: an overemphasis on the mechanics and logistics of the situation and an underemphasis on the actual requirements of the claimant's sincere religious beliefs. At this point, both parties have been given two opportunities to develop the record, and the claimant has met his burden without effective refutation by the employer.

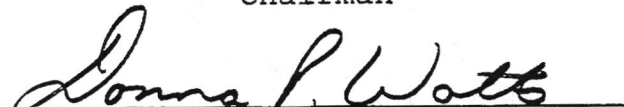
Since the claimant was required by his sincere religious belief to miss work on Easter Sunday, 1987, the Board of Appeals reaffirms its second decision, issued on January 12, 1989, that the claimant was discharged, but not for any misconduct.

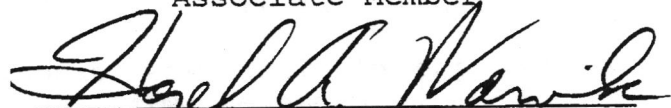
DECISION

The claimant was discharged, but not for misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No penalty is imposed based upon his separation from the United States Fidelity and Guaranty Company. The claimant may contact his local office concerning the other eligibility requirements of the law.

The previous decision of the Board, issued on January 12, 1989, is reaffirmed.

  
Chairman

  
Associate Member

  
Associate Member

K:H:D

kmb

DATE OF HEARING: October 24, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Edward Smith, Jr., Esquire  
2225 St. Paul Street  
Baltimore, MD 21218

U S F & G

ATTN: John Louderback

UNEMPLOYMENT INSURANCE - NORTHWEST

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**BOARD OF APPEALS**

Thomas W. Keech, Chairman  
Hazel A. Warmick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

Decision No.: 26 -BR-89  
Date: January 12, 1989  
Claimant: Ronald Robinson  
Date: 8705176  
Appeal No.:  
S. S. No.:  
Employer: United States Fidelity and Guaranty Company  
L. O. No.: 45  
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 —**

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THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON February 11, 1989

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the facts and reasoning contained in the decision of the Hearing Examiner.



## FINDINGS OF FACT

The claimant was last employed by U.S.F.&G. Company as a senior computer operator. He normally worked the Sunday, Monday and Tuesday shift from 7:00 AM to 7:30 PM. On or about February 27, 1987, the claimant gave notice to his supervisor, Mrs. Colleen Leaf, that he wanted to be off from work on Easter Sunday, April 19, 1987, in order to attend church services in the morning and then receive and entertain family and friends at his home for Easter Sunday dinner. The claimant has deep religious convictions and believed that it was necessary for him to spend the morning of Easter Sunday to worship at his church and, the afternoon, in the traditional, joyous comradery of his family and friends at Easter dinner at his home.

He was told by Mrs. Leaf that a week or so prior thereto, another computer, operator albeit with less seniority than he, also had requested to be off that Sunday and that, since leave was granted on a first-come-first-serve basis, this other employee's request took precedence. His request for leave, therefore, could not be granted unless he could find a suitable substitute for him that Sunday. Mrs. Leaf reminded him that, although they could get by with a skeleton staff of three that Sunday, the computer room would be in serious trouble to perform its assigned tasks adequately if only two operators were there that day.

When the claimant approached Mrs. Leaf again on Tuesday, April 14th, to be off the following (Easter) Sunday, April 19th, she again told him that she could not grant him the leave he asked for unless he secured a suitable substitute. She canvassed the shift herself, without success, to see if anyone would work for the claimant that Sunday. She told the claimant of this and again said that he could not take that Sunday off. The claimant called in that Sunday morning and asked for a "personal business day." The acting supervisor called Mrs. Leaf at her home regarding the claimant's request and Mrs. Leaf then called the claimant at his home and told him, once again, that he could not have the day off. She reminded the claimant that "personal business days," like vacation days, were granted at the discretion of the supervisor and that there was a business need of the employer to have him work that day, April 19. She told the claimant that, if he took off that day, he would be taking an unauthorized absence. The claimant then said that he was taking a personal business day and that ended the conversation. The claimant did not come to work on his shift that day, April 19, 1987. His employment with U.S.F.&G. Company was terminated the following day, Monday, April 20, 1987.

## CONCLUSIONS OF LAW

It is concluded from the weight of the evidence that the claimant was not discharged for misconduct connected with his work within the meaning of Section 6(c) or for gross misconduct connected with his work within the meaning of Section 6(b) of the Law. The employer accepted, without question, the claimant's testimony that he is a deeply religious man. It follows that it was a matter of a very strong religious conviction that he worshiped at his church on Easter Sunday morning and, in keeping with the joyous comradery he traditionally observed, this most important religious holiday be observed also with his family and friends at the Easter dinner his wife had prepared at their home. The claimant was not dilatory in requesting his leave and gave more than seven weeks notice of his need to be away from work for that Easter Sunday. Unfortunately for him, more than two weeks before he made this request, a co-employee had requested and was granted permission to be off the same Sunday. The best interest of the employer would not be served if both of them were off that same day. Since the other employee worked more than 20 hours per week, she too was protected by the first-come-first-served ruling in getting her requested leave approved.

The claimant knew that four operators normally worked in the computer room on Sundays, but that, in a pinch, a skeleton staff of three was a relatively safe calculated risk and that a staff of only two operators ran an unacceptable risk that the best interest of the employer would not be served. The claimant knew, when he did not come to work that day, that he was deliberately disobeying a direct order of his supervisor not to be absent from work that day.

In 1981, however, the U.S. Supreme Court had ruled that, under the First Amendment, a state may not deny unemployment insurance benefits because of conduct mandated by a religious belief even where such belief is not shared by all members of the religious sect. "Religious beliefs need not be acceptable, logical, consistent or comprehensible to another in order to merit First Amendment protection." The only inquiry that the state may make is into the sincerity of the beliefs. Thomas V. Review Board of Indiana Employment Security Division et. al., 101-S.Ct. 1425.

The employer indicated that it accepted the fact that the claimant is a deeply religious man.


## DECISION

The claimant was discharged by U.S.F.&G. Company for reasons other than misconduct connected with his work within the meaning of Section



6(b) or Section 6(c) of the Law. Benefits are payable to the claimant for the week beginning April 18, 1987 if he was otherwise eligible under the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner is reversed.

  
Sanford Hordes  
Hearing Examiner

Date of Hearing: July 26, 1988

Cassette: 4553-B 4554-A

Specialist ID: 45537

Copies Mailed on

Claimant

Employer

Unemployment Insurance - Northwest (MABS)

Edward Smith, Jr., Esq.

Cummings & Smith, P.A.

John W. Louderback  
Senior Services Specialist  
Human Resources Department  
U.S.F.&G.

Debra J. Markwitz, Esq.

U.S.F.&G.

Board of Appeals

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 383-6040

STATE OF MARYLAND  
William Donald Schafer  
Governor

— DECISION —

Date: Mailed: August 10, 1988

Claimant: Ronald Robinson

Appeal No: 8705176

S.S. No.:

Employer: USF&G Company  
J. Louderback, Emp. Supv.

L.O. No.: 45

Appellant: Employer

Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) 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.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

August 25, 1988

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

Claimant  
Edward, Smith, Esq.

FOR THE EMPLOYER:

John W. Louderbach, Senior  
Service Specialist  
Colleen Leaf, Assistant  
Superintendent  
Debra J. Markwitz, Esq.

This appeal was remanded from the Circuit Court of Baltimore City to the Board of Appeals and was remanded by the Board of Appeals to the Appeals Division for a de novo hearing and decision.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The decision of the Hearing Examiner is affirmed.

*Thomas W. Keech*

Chairman

*Debra J. Markwitz*

Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Edward Smith, Jr., Esq.  
Cummings & Smith, P.A.

John W. Louderback  
Sr. Services Specialist  
Human Resources Dept.  
USF & G

Debra J. Markwitz, Esq.  
USF & G

UNEMPLOYMENT INSURANCE - NORTHWEST

# Maryland

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DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

**BOARD OF APPEALS**

Thomas W. Keech  
Chairman

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

Hazel A. Warnick  
Associate Member

Decision No.: 739 -BR-87  
Date: October 21, 1987

Claimant: Ronald D. Robinson

Appeal No.: 8705176

S. S. No.:

Employer: U S F & G Company  
ATTN: J. Londerback, Emp. Supvr.

L.O. No.: 45

Appellant: CLAIMANT

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

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November 20, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

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**— APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

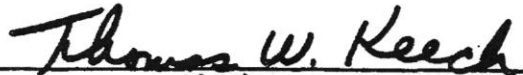
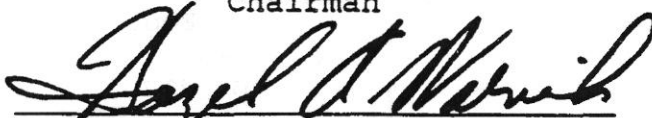
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the facts and reasoning contained in the decision of the Hearing Examiner.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning April 19, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed.

  
\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
Associate Member

K:W  
kmb

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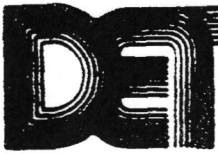
CLAIMANT

EMPLOYER

Edward Smith, Jr., Esquire  
2225 St. Paul Street  
Baltimore, MD 21218

Anna Mary Culver, Esquire  
Sun Life Bldg.  
Charles Center  
Baltimore, MD 21201

UNEMPLOYMENT INSURANCE - NORTHWEST



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman
HAZEL A. WERNICK
Associate Member

- DECISION -

Date: Mailed July 28, 1987

Claimant: Ronald D. Robinson

Appeal No. 8705176

S. S. No.:

Employer: USF&G Company
J. Louderback, Emp. Supv.

L.O. No.: 45

Appellant: Employer

Issue: Whether the Claimant was suspended or discharged for misconduct, or gross misconduct, within the meaning of Section 6(b) or 6(c) of the Law.

- NOTICE OF RIGHT OF FURTHER APPEAL -

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THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON August 12, 1987

- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Anna Mary Culver,
Esquire, Shaw &
Rosenthal; John
W. Louderback,
Senior Services
Specialist, Human
Resources Department;
Colleen Leaf,
Claimant's Supervisor;
Harry Rhine, Human
Resources Department



## FINDINGS OF FACT

The Claimant began employment on August 16, 1982 and performed services as a senior computer operator. He was separated from this employment through discharge on April 20, 1987.

Evidence demonstrates that the employer operates a computer services division which functions on a 24-hour basis, 365 days per year, and employees' schedules are predicated upon this basic premise. The Claimant worked a 36-hour week consisting of three 12 hour days per week, being scheduled to work on Sundays, Mondays, and Tuesdays, 7:30 a.m. to 7:30 p.m., and the reciprocal schedule of 7:30 p.m. to 7:30 a.m.

The employer customarily considers leave requests on a "first come-first served" basis, and seniority determines any conflicts. In mid-February, an employee had requested leave time for Sunday, April 19, 1987 (Easter day), and the Claimant later requested leave for the same day, citing a social event at his home for that day. The Claimant was advised that because of the prior granting of a leave request during his shift schedule that his leave request was refused. However, he was advised that if he could find another employee to fully cover his duties for that day that the leave would be granted. The evidence establishes that the first employee to request April 19 leave was also advised that a suitable substitute employee would have to be provided, and the requesting employee located a substitute to cover the schedule.

By April 14, the Claimant had not presented a substitute employee to cover his schedule. On that date, he reiterated his request for leave on the 19th and was told that without a substitute the work force would be reduced to two persons, an unacceptable level, and the request was refused. The Claimant was again reminded of the opportunity to produce a replacement. The Claimant felt that it was the employer's obligation to find a replacement, and the Claimant's supervisor did, on April 14, attempt to find a substitute. There was a tentative proposal for two other employees to replace; the Claimant on two six-hour shifts, but the Claimant's supervisor would not accept this form of substitution. The Claimant disagreed with his supervisor's judgment, but a final denial of leave was made.

The Claimant did not report as scheduled on April 19 but called in a requested a personal day. This request was forwarded to Colleen Leaf (employer's witness present at the hearing) who called the Claimant at home and directed him to report as scheduled and advised him that his absence was

unauthorized and that he would be subject to discharge. The Claimant failed to report on the 19th.

The record shows that the Claimant is currently employed one day per week by "The Catering People," and earns \$70 for services rendered.

#### CONCLUSIONS OF LAW

It has been held that as a condition of employment, an employer has the right to expect its workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detainment or emergency, to receive prompt notification thereof. Failure to adhere to this standard has repeatedly been held to constitute misconduct. Therefore, the Claimant's failure to report as scheduled would, at the very least, constitute misconduct within the meaning of Section 6(c).

However, in the instant case, the Claimant's actions go far beyond the standard of misconduct as cited above. The Claimant was fully aware of the special nature of the employment and the particular needs of the employer to have computer operators present at all times. This was clearly a condition of employment accepted by the Claimant. Likewise, the Claimant was fully aware of the procedure needed to obtain leave under these special circumstances. When the Claimant originally sought April 19 as a leave day, he was advised that someone else had previously been granted this day, but it could be available to him if he provided a satisfactory substitute. The Claimant failed to act on this opportunity until April 14, at which time a tentative arrangement was offered under which two employees would substitute for him. In the judgment of the Claimant's supervisor, this was not a satisfactory arrangement in accordance with the leave standards, and the leave was refused. At that time, the Claimant was fully aware that it was his obligation to report on April 19. The Claimant deliberately and willfully failed to report on that date but called in to the employer, again reiterating his request for a personal day. The Claimant was specifically put on notice by the employer's witness present at the Appeals Hearing that it was his obligation to report to work or that he would be subject to discharge. Even under these explicit circumstances, the Claimant failed to report. The Claimant's action clearly constitutes a deliberate and willful disregard of standards which the employer has a right to expect as to constitute gross misconduct, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

## DECISION

It is held that 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 April 19, 1987 and until such time as he becomes reemployed and earns ten times his weekly benefit amount (as previously determined).

The determination of the Claims Examiner is reversed.

*Louis Wm. Steinwedel*  
Louis Wm. Steinwedel  
Hearing Examiner

Date of Hearing: 7/9/87

Cassette: 2258, 3288 (Gray)

Copies Mailed on July 28, 1987 to:

Claimant

Employer

Unemployment Insurance - Northwest (MABS)

Anna Mary Culver, Esquire  
Shawe & Rosenthal