



DEPARTMENT OF HUMAN RESOURCES  
**EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND  
HARRY HUGHES  
Governor  
KALMAN R. HETTLEMAN  
Secretary

383-5032  
- DECISION -

**BOARD OF APPEALS**

JOHN J. KENT  
Chairman

HENRY G. SPECTOR  
HAZEL A. WARNICK  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 1168-BH-81

DATE: December 24, 1981

APPEAL NO.: 14524

S. S. NO.:

CLAIMANT: David Chinn

EMPLOYER: Cooks Supermarket

L. O NO.: 1

APPELLANT: REMAND FROM COURT  
REOPENED CASE  
CLAIMANT APPEAL

ISSUE: Whether the Claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Law; and whether the Claimant was able to work, available for work, and actively seeking work within the meaning of Section 4(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 SUPERIOR 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

January 23, 1982

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**- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

David Chinn - Claimant

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 into this case, as well as Employment Security Administration's documents in the appeal file.

#### FINDINGS OF FACT

The Claimant was employed by Cooks Supermarket as a meat cutter from approximately August 2, 1980 until November 21, 1980, when he was discharged, and again from December 21, 1980 until he was discharged on February 7, 1981.

The Claimant is an acknowledged alcoholic and has been so for over six years. The Employer was aware of this when the Claimant was hired but decided to give him an opportunity to work.

In November of 1980, the Claimant was discharged after reporting to work in an intoxicated condition. He subsequently entered a detoxification program at Howard County Hospital.

The Claimant was rehired in December of 1980, and reported to work sober until February of 1981, when he again reported to work intoxicated. He was discharged from his employment.

He subsequently went back to the hospital and after treatment, entered Reality House, a Quarter-way house, where he remained until approximately the last week in February of 1981. He began actively seeking work upon his release.

The Claimant now attends regular counseling sessions and AA meetings.

#### CONCLUSIONS OF LAW

The Claimant, by reporting to work in an intoxicated condition, especially after being given a second chance by the Employer to rehabilitate himself, committed a deliberate and willful disregard of standards of behavior which his Employer had a right to expect, showing a gross indifference to the Employer's interest.

The Claimant is an alcoholic. However, even if alcoholism is viewed entirely as an illness, it would be unfair to the Employer to construe it as giving an employee carte blanche with regard to his conduct on the job. Where, as Claimant has demonstrated some ability to remain sober, and where the Employer has made a sincere effort to give the Claimant an opportunity to rehabilitate himself, the Claimant's repeated failure to report to the job sober and able to work, constitutes gross misconduct within the meaning of Section 6(b) of the Law.

The Claimant testified that upon his release from the Quarter-way house at the end of February of 1981, he was able and actively seeking work. In the absence of any evidence to the contrary, the Board concludes that the Claimant was meeting the requirements of Section 4(c) of the Law, beginning February 22, 1981.

The Claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Law. He is disqualified from receiving unemployment insurance benefits for the week beginning February 7, 1981 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1200.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee as to Section 6(b) is affirmed.

The Claimant is able to work, available for work, and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. He is entitled to benefits for the week beginning February 22, 1981 and thereafter if otherwise eligible under the Law.

The decision of the Appeals Referee as to Section 4(c) is reversed.

  
Associate Member

  
Chairman

W:K

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DATE OF HEARING: December 1, 1981

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CLAIMANT

EMPLOYER

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