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STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor
EUGENE A. CONTI, JR., Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

DARRYL N. MORGAN

Decision No.: 01191-BR-97

Date: April 23, 1997

Appeal No.: 9700719

S.S. No.:

Employer:

WASHINGTON OVERHEAD DOOR INC

L.O. No.: 07

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: May 23, 1997

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but reaches a different conclusion of the law.



The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1 defines "Aggravated Misconduct" as intentional conduct by an employee in the workplace that results in a physical assault upon or bodily injury to or property loss or damage to the property of the employer, fellow employees, sub-contractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's product or services.

The Board finds no mitigating factors in the record to support a conclusion that the claimant's actions of striking a co-worker (in the position of a supervisor) in the face are anything less than aggravated misconduct. Such an act as described in the record was with malice.

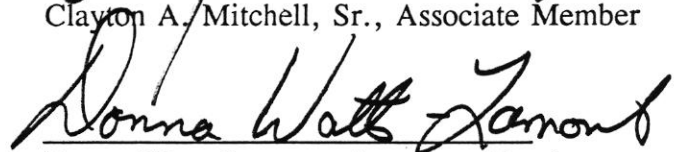
DECISION

The claimant was discharged for aggravated misconduct, connected with the work, within the meaning of §8-1002.1 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning November 24, 1996 and until the claimant earns thirty times his weekly benefit amount and thereafter becomes re-employed.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

dt

Copies mailed to:
DARRYL N. MORGAN
WASHINGTON OVERHEAD DOOR INC
Local Office - #07

UNEMPLOYMENT INSURANCE APPEALS DECISION

DARRYL N. MORGAN

Before the:

SSN

Claimant

vs.

WASHINGTON OVERHEAD DOOR INC

Employer/Agency

**Maryland Department of Labor,
Licensing and Regulation
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9700719
Appellant: Claimant
Local Office: 07 / College Park

February 6, 1997

For the Claimant: PRESENT

For the Employer: PRESENT, GERALD LEWIS

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant was employed as a full-time service department helper, earning \$7.50 per hour from September 28, 1994 through November 27, 1996. The employer is a commercial door installer.

The employer utilizes two man teams consisting of a mechanic and a helper. The claimant was assigned to a mechanic named Warren Gaskell. The claimant and the mechanic experienced some friction over the time that they were assigned together. On several occasions the claimant asked the mechanic if he could be reassigned to another truck. The claimant did not go to the mechanics superiors to request a transfer because he and the mechanic had been friends in the past and he felt sure that they could resolve any difficulties if they continue to work together.

On November 27, 1996, the claimant and the mechanic had a series of arguments regarding work and non-work related matters. At one point, the mechanic slammed the claimant up against a truck. The claimant nonetheless continued to work because he did not want to get the mechanic in trouble and he feared that he would not be believed since he was only the helper. After the truck incident, the mechanic continued to taunt the claimant threatening to get him. After a while, the claimant and the mechanic were face to face. The claimant was questioning the mechanic trying to find out what he meant by "getting him." The claimant feared that the mechanic would lay in wait for him after work or during their trip back to the shop. An argument ensued and the claimant struck the mechanic in the face. After striking the mechanic they continued to work to the end of the day. The mechanic then stated that he was going to call into the office and report the incident. The claimant did not feel comfortable riding with the mechanic so he found his own way. He later called into the operations supervisor. It was then that he discovered that he had been terminated for striking his co-worker.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994) provides for a disqualification from benefits where the claimant is discharged (or suspended) as a disciplinary measure for acts connected with the work which the Secretary determines to be misconduct. The term "misconduct" is undefined in the statute but has been judicially defined as "...a transgression of some established rule or policy, 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 hours of employment or on the employer's premises." Rogers v. Radio Shack, 271 Md. 126, 132, 314 A.2d 113 (1974).

EVALUATION OF EVIDENCE

In a termination case the employer bears the burden of proving that the claimant's actions which led to his discharge amount to misconduct, gross misconduct or aggravated misconduct. In this case, the credible evidence indicates that the claimant was terminated for actions which constitute misconduct. The claimant struck his co-worker during the course of an argument. Although the claimant's actions were clearly improper, he has credibly testified that he was not the aggressor in the situation. He had been pushed into a truck earlier in the day and arguments had been instituted by the mechanic who was at that site serving as he supervisor. The claimant would have been advised to simply call at that point and report the mechanic's actions to a superior. Instead, the claimant tried to remain at the job site and ended up in a more heated exchange where he struck his co-worker. The employer contends that the claimant's actions warrant the more serious finding of gross misconduct. This is not supported by the evidence in the record. Since the claimant acted in response to provocation by his co-worker, who was at that site in the position of a supervisor, his actions do not warrant the more serious finding of gross misconduct.

DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994). Benefits are denied for the week beginning (Sunday) November 24, 1996 and for the nine weeks immediately following.

The determination of the claims examiner is reversed.



J. Smylie, ESQ
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **February 21, 1997**.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 27, 1997

LR/Specialist ID: 07214

Seq. No.: 001

Copies mailed on February 6, 1997 to:

DARRYL N. MORGAN
WASHINGTON OVERHEAD DOOR INC
LOCAL OFFICE #07
January 29, 1997