

 **Maryland**  
Department of Economic &  
Employment Development

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

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	1215-BR-91
	Date:	October 4, 1991
Claimant: Craig V. Taylor	Appeal No.:	9109035
	S. S. No.:	
Employer: Fort Howard Cup Corp. ATTN: John Kurkis	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 8-1002 or 8-1003 of the Labor and Employment Article.

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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

November 3, 1991

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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 reverses the decision of the Hearing Examiner. The Board adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts warrant a different conclusion.

parties and it provided that an appeal could be requested no later than May 24, 1991. The appeal by the employer was filed on May 28, 1991. However, the postmark on the envelope shows that the employer mailed the request for an appeal on May 24, 1991 and it is therefore timely.

The claimant began working on June 22, 1988 and continued until his separation on March 20, 1991. The claimant was a baler operator and was earning a salary of \$7.50 per hour at the time of his separation.

The claimant was discharged for sleeping on the job. According to the employer's rules of conduct, sleeping during working hours is cause for immediate discharge.

The claimant's duties required him to drive a forklift and remove bales of scrap paper from one area to another. The employer observed him, on his forklift, back in a corner, and sitting behind rolls of scrap paper. He was initially observed by a co-worker, who reported him to the supervisor. The supervisor went to the area and observed the claimant for thirty seconds or so. The claimant was leaning forward with his eyes closed, and he was motionless.

The employer testified that no distinction is made between sleeping while performing hazardous duties and non-hazardous duties. At the time of the claimant's offense, he was not operating his forklift, nor was it blocking passage of other co-workers.

#### 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.

Sleeping on the job is considered misconduct or gross misconduct, depending upon the severity of the offense. The employer makes no distinction between severe and non-severe offenses. As a matter of fact, the employer testified that no exceptions, to his knowledge, had ever been made for an employee found sleeping on the job.

The employer weighs heavily on the fact that the claimant was

The Board has held that where a claimant deliberately positions himself to sleep on the job, his actions amount to gross misconduct. See, Williams v. Johns Hopkins Hospital, 777-BR-84. The facts of this case are that the claimant backed his forklift into a corner in an attempt to hide. No mitigating facts were found which might explain the claimant's falling asleep on the job and possibly justify a lesser penalty, e.g., medication, long hours on the job or a second job. The claimant's act was gross misconduct as defined in Section 8-1002 of the Labor and Employment Article.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning March 17, 1991 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,780) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

DW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schacter, Governor*  
*J. Randall Evans, Secretary*

*William R. Merriman, Chief Hearing Examiner*  
*Louis Wm. Steinwedel, Deputy Hearing Examiner*

*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

*Telephone: 333-5040*

**— DECISION —**

Claimant:	Craig V. Taylor	Date:	Mailed: 07/09/91
		Appeal No.:	9109035
		S. S. No.:	-----
Employer:	Fort Howard Cup Corporation	L. O. No.:	45
		Appellant:	Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.  
Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c)(3) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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

July 24, 1991

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**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Not Present

William Albrecht,  
Second Shift  
Operations Manager;  
John Kurkis,  
Employee-Relations  
Manager

FINDINGS OF FACT

The determination of the Claims Examiner was mailed to the

back in a corner, and it was obvious that he was trying not to be seen. The Examiner was not impressed by this fact, because it was logical for the claimant to hide, if he was going to violate company policy prohibiting sleeping.

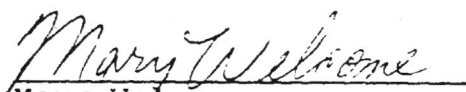
Based upon the foregoing, the determination of the Claims Examiner will be affirmed.

DECISION

The employer filed a timely appeal, as shown by the postmark dated May 24, 1991, as provided by Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant was discharged for misconduct, in connection with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The claimant is denied benefit for the week beginning March 17, 1991 and for the four weeks that follow.

The determination of the Claims Examiner is affirmed.

  
Mary Welcome  
Hearing Examiner

Date of Hearing: 06/18/91  
dma/Specialist ID: 45536  
Cassette No.: 5800  
Copies mailed on 07/09/91 to:

Claimant  
Employer  
Unemployment Insurance - Northwest (MABS)