

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

	Decision No.:	135-BH-89	
	Date:	Feb. 23 , 1989	
Claimant:	Christopher M. Hagberg	Appeal No.:	8808823
		S. S. No.:	
Employer:	Liberty Homes, Inc. ATTN: Angela Liberty	L. O. No.:	2
		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 —

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, 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

March 25, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Christopher Hagberg - Claimant

Angie Liberty -
President
Chris Clore -
Consultant

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony and documents offered at the Ward hearing. Due to the fact that some of the taped testimony before the Hearing Examiner was unavailable, the Board did not consider any of that testimony. Documents submitted into the record before the Hearing Examiner, however, were considered. The claimant, who was the sole witness before the Hearing Examiner, was given a complete opportunity to testify again before the Board. The testimony of the claimant and that of one of the employer's witnesses, Ms. Angela Liberty, differed on several points. The Board finds Ms. Liberty to be the more credible witness. --

FINDINGS OF FACT

The claimant was employed from October 6, 1987 until May 9, 1988 as an assistant project manager, earning approximately \$26,000 per year. He was in charge of supervising quality control of the subcontractors' work, supervising the ordering of materials, checking the finished product and making sure the subcontractors completed their jobs properly, and some customer service. These duties were mostly limited to the finished end product and were concerned with the carpentry work, the cleaning painting, carpeting and touch-up work. Because the claimant had difficulty with his duties, his responsibilities were gradually reduced, to some extent, in order to allow him to be able to finish them.

The claimant worked many hours per week, but he was generally unsuccessful in meeting his job requirements. The employer maintains a set procedure of using log books and clipboards in order to schedule and keep track of subcontractors' work. The claimant would use these methods at times, but he generally neglected this entire area of his work responsibilities. As a result, the work was not supervised properly. In fact, a great many of the claimant's hours were spent in performing, personally, jobs that the subcontractors were obligated to do. In most if not all of these cases, adequate tracking and followup by the claimant of the subcontractors would have made it unnecessary for the claimant to perform these jobs himself.

The employer had a series of meetings with the claimant and, although his performance was satisfactory at the very beginning of his employment, his continual failure to follow the employer's procedures (and the resultant work deficiencies) became an annoyance and source of irritation to the employer. A series of meetings were held with the claimant, some of them regularly scheduled evaluation meetings. Meetings were held on March 9, March 14, March 21, March 23, April 22, April 26, May 7 and May 9, 1988. The

claimant was extremely resistant to my criticism on the part of his employer. He referred to one of his early evaluations as "Putting a Price on Chris' Head, Part 11." This was done openly to the employer. At subsequent meetings, the claimant simply refused to listen to his employer's instructions, especially about the log book and clipboards. He simply asserted repeatedly to the employer that he was sick and tired of being criticized, that he was unappreciated, and that the employer did not know how to make him happy. Instead of answering the employer's questions concerning the work performance, he replied, on more than one occasion, "I don't have to take this shit."

On his last day of work, a similar conversation took place. Once again, the employer pointed out to the claimant his work deficiencies. Instead of responding to his employer's work-related comments, the claimant simply began loudly asserting that he hated the job, that he worked his "ass off," that he wasn't paid enough, that he was "sick of this shit," that he was unappreciated and that the employer did not know how to make him happy. The employer's representative left the site of this meeting, but the claimant appeared shortly thereafter in the trailer which was the employer's office and, within earshot of the employer's representative and also the employer's president, repeated the same type of comments in the same type of language. He was then fired.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged on May 9, 1988, and that the discharge was for gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

An employer has the right to expect his employees to follow Reasonable rules and -work procedures. The claimant's repeated and continual failure to use the log books and the clipboards, despite his employer's repeated warnings to him to do so, constitutes a series of repeated violations of work rules, showing a gross indifference to the employer's interest.

It can be argued that, since the claimant worked a great number of hours for this employer, his work deficiencies were the result of poor judgement rather than a gross indifference to the employer's interests. The Board does not believe this to be so, however, since the claimant's persistent refusal to accept any direction from the employer and his insubordinate and offensive remarks to the employer in evaluation sessions indicate to the Board an obstinate refusal to adhere to instructions rather than a mere failure to understand or comprehend.

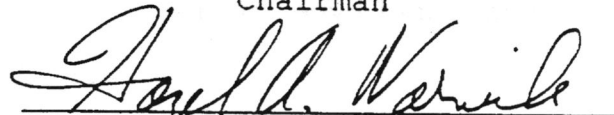
The Board has previously held that a refusal to listen to a supervisor in a counseling meeting, when accompanied by screaming at the supervisor and walking out of the meeting, constituted gross misconduct, in itself. Young v. North Charles General Hospital (626-BR-84). While the claimant's conduct on his last day of work was not quite as egregious as of the claimant in the Young case, his refusal to listen to the employer during counselling and evaluation sessions had persisted over a long period of time, and his total conduct demonstrated a gross indifference to his employer's interest.

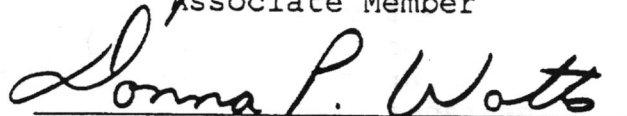
DECISION

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 May 8, 1988 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$2,050.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed..


Chairman


Associate Member


Associate Member

K:H:D

kmb

DATE GE' HEARING: January 3, 1989

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - GLEN BURNIE