



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383-5032

—DECISION—

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

STATE OF MARYLAND  
HARRY HUGHES  
Governor

CLAIMANT: Juanita Karim

DECISION NO: 136-BH-84

DATE: February 8, 1984

APPEAL NO.: 12644

S.S.NO.:

EMPLOYER: Union Trust

LO. NO.: 1

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant was discharged for misconduct connected with the work, within the meaning of § 6(c) of the Law; and whether the Claimant was discharged for gross misconduct, connected with the work, within the meaning of § 6(b) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT March 9, 1984

—APPEARANCE—

FOR THE CLAIMANT:

Juanita Karim - Claimant

FOR THE EMPLOYER:

Patrick Pilachowski  
Attorney  
Fern Morgan -  
Personnel Officer

EVIDENCE CONSIDERED

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 in this case, as well as Department of Employment and Training's documents in the appeal file.

#### FINDINGS OF FACT

The Claimant was employed as a bank teller on August 4, 1983. In applying for the position, the Claimant was required to complete a written employment application which asked if she had ever been convicted of a crime. The Claimant's answer to that question was in the negative. Subsequently, the employer received information from the United States Department of Justice, F.B.I., that on May 15, 1980, the Claimant had been convicted of malicious destruction of personal property-clothing, and that a 30 day jail term, and a \$250.00 fine had been suspended upon conviction. The F.B.I. had, apparently, based its information on a report it received to that effect from the Baltimore City Police Department.

On September 16, 1983, based upon the information from the F.B.I., the employer discharged the Claimant for falsification of her employment application.

During 1980, the Claimant's sister-in-law lived with her. The Claimant observed a household rule that smoking marijuana was not allowed. At one point, the Claimant suspected that the sister-in-law had been smoking marijuana in the home in the presence of the Claimant's daughter. Whereupon, the Claimant evicted the sister-in-law from the home, and put her personal property on the street where it was damaged by rain.

The sister-in-law instituted a criminal action against the Claimant for malicious destruction of her property which resulted in conviction in the District Court of Maryland. The Claimant appealed the conviction to the Circuit Court for Maryland in Baltimore where Assistant State's Attorney Gordon Boone, with the approval of the Court, placed the case on the stet docket on August 7, 1980, because, according to the docket entries, the State's case was weak. Mr. Boone informed the Claimant that "that's it," and that she would not have to return. Based upon this scenerio, the Claimant belie-zeal that she had not been convicted of the charge.

We find as a fact that when the Claimant stated that she had not been convicted of a crime in her employment application, she genuinely believed that she was telling the truth.

#### CONCLUSIONS OF LAW

The Claimant did not falsify her application when she stated that she had not been convicted of a crime because she answered the question to the best of her knowledge, information, and belief. A statement is not a "falsification" when the person making the statement honestly believes that she is telling the truth. Not only was the Claimant's belief genuine, but it was reasonable under the circumstances. The Claimant appealed her conviction to the Circuit Court where it was placed on the stet docket. It was reasonable for her to believe that no conviction existed approximately three years later when she submitted her

application to the employer. Moreover, not only was the Claimant's belief genuine and reasonable, but it was an accurate statement under the law. There is a right of appeal from convictions in the District Court to the Circuit Courts of Maryland, CJ § 12-401 (a), and the appeals shall be tried de novo therein. CJ § 12-401 (d). "The de novo trial washes out the trial in the District Court but not the basis for it." Pinkett V. State, 30 Md. App.458, 352 A.2d 358, cert. denied, 278 Md. 730 (1976).

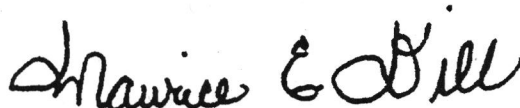
Thus, the Claimant's conviction in the District Court was "washed out" by her appeal therefrom, and the placing of the case on the stet docket. The Claimant had not, as a matter of law and fact, been convicted of the crime when she submitted her application to the employer. The employer rejected the Claimant's truthful and accurate statement on her application in favor of the inaccurate statement of a third party. The reasonableness of the employer's misplaced reliance is immaterial, because it does not go to the issue of whether the Claimant engaged in misconduct.

The Claimant is unemployed "through no fault of her own" within the contemplation of the unemployment insurance law. Benefits will be allowed.

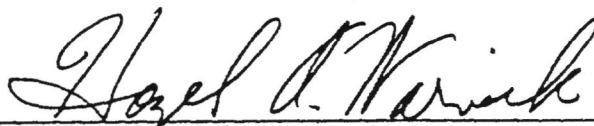
DECISION

The Claimant was discharged, but not for misconduct or gross misconduct, connected with the work within the meaning of §§ 6(c) or 6(b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment with Union Trust. The Claimant may contact the local office concerning the other eligibility requirements of the Law.

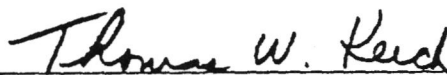
The decision of the Appeals Referee is reversed.



Associate Member



Associate Member



Chairman

DATE OF HEARING: January 24, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - BALTIMORE