



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND  
HARRY HUGHES  
Governor

BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

MARK R. WOLF  
Chief Hearing Examiner

— DECISION —

Decision No.: 14 -BR-87

Date: Jan. 9 , 1987

Claimant: Domenic Prestileo, Jr.

Appeal No.: 8605499

S. S. No.:

Employer: Durrett-Sheppard Steel  
ATTN: Kathy Avara. Pers.

LO. No.: 40

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

February 8, 1987

— 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.

Based upon these facts, the Board concludes that the claimant's conduct was a deliberate violation of standards his employer had a right to expect, showing a gross disregard for his employer's interest. 'This is gross misconduct within the meaning of Section 6(b) of the law.

The claimant consumed an enormous quantity of beer a few hours before he was to report to work. He then reported to work with an alcohol reading in his blood of .17. The claimant's job consists, at least in part, of operating a ten-ton crane. The Board has held that reporting to work in an unfit condition due to drinking the night before is gross misconduct. Bates v. Furniture Connection (161-BR-82). In this case, however, the Hearing Examiner concluded that gross misconduct did not exist because there was no specific evidence of any specific conduct on the part of the claimant other than appearing for work in that condition. The Board disagrees and finds that appearing for work after having consumed over 14 cans of beer over a period extending up to a few hours before the time to report to work, with a blood alcohol level of .17, when the job entails operating dangerous machinery, is gross misconduct as a matter of law.

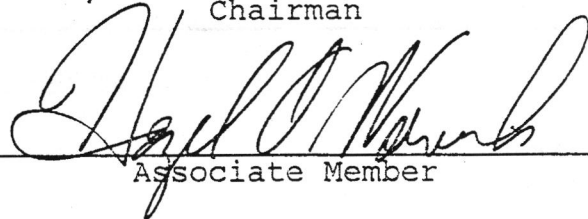
#### DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning April 20, 1986 and until he becomes reemployed, earns ten times his weekly benefit amount (\$1,620) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W  
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



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1986 SEVERN E. LANIER
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MARK R. WOLF
Chief Hearing Examiner

DECISION

Claimant: Domenic Prestileia, Jr.
249 Baltimore Ave.
Baltimore, Md. 21222

Appeal No.: 8605499

S. S. No.: 213-78-445

Employer: Durrett Sheppard Ste.
P.O. Box 5188
Baltimore, Md. 21224

L.O. No.: 40

Appellant: Claimant

Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 September 22, 1986

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Not Present

Employer - Not Present

## PREAMBLE

The Claimant's appeal was originally scheduled to be heard -on June 3, 1986 at 10 a.m. at local office 40 before Hearing Examiner John F. Kennedy, Jr. The Claimant failed to appear and the Hearing Examiner, accordingly, dismissed the Claimant's appeal. The Claimant has petitioned the lower Appeals Division for reopening of his dismissal based on the fact that he never received the first appeal hearing notice. Good cause having been shown by the Claimant for reopening his dismissal, the Claimant's petition is hereby granted.

## FINDINGS OF FACT

The Claimant began working for the employer on January 3, 1985 as a full-time warehouseman. His last day of work was April 24, 1986 when he was discharged by the employer for appearing at work under the influence of alcohol.

The testimony reveals that reporting for work under the influence is a violation of the company's work rules, Major Offenses, rules 23 and 15. During the week that the Claimant was terminated, he was working the schedule of 7 a.m. to 3:30 p.m. The day prior to the Claimant's discharge he went to a bar with fellow employees, cashed his paycheck, and remained drinking beer until the bar closed at 2 a.m. The Claimant was scheduled to report back to work at 7 a.m. The Claimant consumed that evening, anywhere from 12 to 14 cans of beer and had several additional beers after he returned home. The Claimant had no more than two hours sleep that evening but did report to work as scheduled on the following morning at 7 a.m. He was observed by his supervisors and was asked if he would take a blood test which he agreed to do. The blood test revealed a .17 alcohol reading. The Claimant was then suspended and finally discharged.

The Claimant operates a ten ton crane in the course of his employment.

## CONCLUSIONS OF LAW

The nonmonetary determination of the Claims Examiner that the Claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law is not supported by testimony before the Hearing Examiner. Section 6 (b) of the Law provides that gross misconduct is conduct which is a deliberate and willful disregard of the standard of behavior which an employer has a right to expect, showing gross indifference in the employer's interest. It is concluded by the Hearing Examiner that if the Claimant had appeared on the job and was drinking on the job his conduct would be tantamount to gross misconduct. The Claimant does readily admit to consuming an inordinate amount of beer the previous night. However, the hearing Examiner has no testimony before him of the Claimant's conduct when he appeared for work the next morning. There is no testimony as to any actions of the Claimant to show that he actually did anything adverse to the employer's interest. Therefore, the determination of the Claims Examiner will be reversed, and the Claimant disqualified under the Provisions of Section 6(c) of the Law for misconduct.

## DECISION

The Claimant was discharged for misconduct connected with the work within the meaning of Section 6(C) of the Maryland unemployment Insurance Law. Benefits are denied for the week beginning April 20, 1986 and the nine weeks immediately following.

8605499

The determination of the Claims Examiner is reversed.

  
Gerald Askin  
Hearing Examiner

Date of hearing: 7-24-86

Greg Johns

Cassette: 3692

Copies mailed on September 5, 1986 to:

Claimant

Employer

Unemployment Insurance - East-point