



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

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HAZEL A. WARNICK
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Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

DECISION

Claimant: Elizabeth A. Franklin
Employer: Printers II, Inc.
ATTN: Karen J. Rockhill

Decision No.: 140 -BH-86
Date: March 12, 1986
Appeal No.: 8505096
S. S. No.:
L.O. No.: 43
Appellant: CLAIMANT

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 MAYBE 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 April 11, 1986

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Elizabeth A. Franklin - Claimant
Edward Tolchin - Attorney

EVALUATION OF THE EVIDENCE

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 the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a sales representative for Printers II, Inc. from August 30, 1984 until on or about April 12, 1985 when she was discharged. At the time that the claimant was hired, the employer knew that she was engaged to be married to a man who worked, for the Wessel Company, another printing company that was in a somewhat different field from the employer but which had some competitive interests with Printers II. This potential conflict of interest was discussed by the claimant and the president of Printers II and it was decided that this should not prevent the claimant from being hired, since the area of competition between the two firms was small. However, the claimant did assure the president at that time that she would not share any information about Printers II with her husband. She began working for Printers II in August, 1984 and apparently was doing a good job.

Sometime prior to April 12, 1985, the claimant had a conversation with a fellow sales representative at Printers II, Tim Walsh, during which she informed him of a job opportunity where her husband worked, the Wessel Company, which she thought Mr. Walsh would be interested in applying for. The claimant believed that Mr. Walsh was not happy at his job with Printers II. Although Mr. Walsh initially responded that he was satisfied with his present job, upon further discussion with the claimant he decided to contact her husband and apply for the job. Subsequently he did so, and had two job interviews at Wessel but was not hired for the job.

At some point he made this situation known to his present employer, Printers II. When the management of Printers II learned of the claimant involvement in the situation, she was immediately discharged.

CONCLUSIONS OF LAW

The Board concludes that the act for which the claimant was discharged does not rise to the level of gross misconduct connected with the work within the meaning of Section 6(b), as found by the Hearing Examiner below, but is misconduct, connected with her work, within the meaning of Section 6(c) of the law. Therefore a lesser penalty is appropriate.

There is insufficient evidence that the claimant's action was done with an intent to harm her employer. Nevertheless, the claimant was in a sensitive position, being the wife of an employee at a company that was at least in some way, a competitor of her own employer. The evidence shows and the claimant admits at the time she was hired, this potential conflict of interest was discussed with her employer and she assured the employer at that time that she would not share sensitive information with her husband. Although there is insufficient evidence that she actually shared sensitive information with her husband, the evidence does show that she discussed with her husband the possibility of Mr. Walsh at least applying for a job with Wessel Company, that she informed Mr. Walsh of the potential job opportunity with her husband's company, and that at least to some degree she encouraged him to apply for a job with Wessel. Therefore, she did violate her duty to her employer to refrain from any actions or discussions that could be a conflict of interest between her husband's company and the employer.

The Board agrees with the Hearing Examiner that this case is distinguishable from the situation in a prior Board decision, Benvegna v. Sapero & Sapero, 720-BH-84, where the claimant passed along information to a fellow employee about a potential job in another company. In that case there was no connection between the claimant and the other firm. Further and more importantly, in Benvegna, there had been no prior discussion or agreement between the claimant and the company concerning any potential conflict of interest regarding the claimant's duty to her employer.

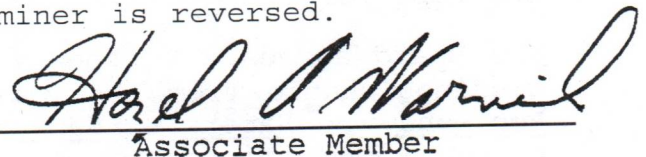
The Board does not mean to infer that the claimant's actions here are misconduct merely because she happened to be married to an employee of the other company. However, the claimant was hired with the understanding that she would have to be especially careful regarding her loyalty to her employer because of the special situation, and in discussing Mr. Walsh with her husband and in discussing the opportunity at Wessel, with Mr. Walsh, she violated that duty.

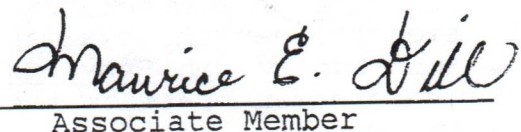
However, since there is no evidence that the claimant either intended to cause any harm to her employer nor is there any evidence that she did, in fact cause any harm to her employer, the Board does not find her action shows a gross indifference to her employer's interest and is therefore not gross misconduct within the meaning of Section 6(b). The claimant did not give away any of her employer's secrets or sensitive information to Wessel Company. Nor did she attempt to take business away from her company or try to provide such business to Wessel Company. As the Board said in Benvegna, supra "the claimant was not competing with her employer, she was not being compensated by another . . . firm for recruiting persons from the employer, and she was not using or revealing any information she had received in confidence as a result of her employment." That standard is applicable in this case as well. Therefore, the Board concludes--that the claimant was discharged for misconduct pursuant to Section 6(c), but not gross 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. She is disqualified from receiving benefits from the week beginning April 7, 1985 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

W:D

DISSENT

Since the claimant attempted to recruit a co-employee for a job opening in her husband's business, when that employee was not even looking for other work at the time, this case is distinguishable from the case of Benvegna v. Sapero and Sapero (720-BH-84) where the Board found that an employee's passing along of publicly available job information to a co-employee was not misconduct where the employee had no interest in the



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Chief Hearing Examiner

— DECISION —

Claimant:	Elizabeth A. Franklin	Date:	July 30, 1985
		Appeal No.:	05096
		S. S. No.:	
Employer:	Printers II, Inc.	LO. No.:	43
	701	Appellant:	Employer

Issue: Whether the Claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) 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

August 14, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present
George Van Tassel, husband/witness
Louis Schuebel, Purchasing Agent
of District Photo Corp. - Witness
J. Vichness, Eastern Regional Sales
Manager of the Wessel
Company, Inc. - Witness
Edward J. Tolchin, Esquire
Jennifer R. Levin, Esquire

Karen J. Rockhill,
Personnel Admin.
Robert Saums,
President
Tim Walsh,
Salesman
James Doyle
Asst. to President

firm advertising the job opening. Employees certainly have the right to discuss job openings among themselves, but actively recruiting a valued co-employee for a different and competing firm in which one's immediate family has an interest is a breach of loyalty to the employer. I agree with the reasoning of the majority of the Board but would go further and find both a deliberate violation of standards an employer had the right to expect and a gross indifference to her employer's interest. I would affirm the Hearing Examiner's finding of gross misconduct under Section 6(b) of the law.

Thomas W. Keech
Chairman

K

kmb

DATE OF HEARING: November 5, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Edward Tolchin, Esquire

UNEMPLOYMENT INSURANCE - WHEATON

FINDINGS OF FACT

The claimant worked from August 30, 1984 until April 12, 1985 as a sales representative for Focus Communications which is a sub-division of Printers II, Inc. Her salary was approximately \$30,000 a year. She was fired for a conflict of interest in securing a employee for her husband's competitive firm.

When the claimant was hired by the President of Printers II, he knew that the claimant's husband was a salesman for a competitor, The Wessel Company, Inc. While both The Wessel Company, Inc. and Printers II, Inc. are not necessarily in the exact competitive business, they are both generally in the field of printing and have some competitive interests. The exact percentages of the competitive interests are under scrutiny on this appeal. There are times when it would probably not be advantageous for each to know the other's business. They do have specific presses which do different types of chores and therefore, have some different types of printing capabilities.

- When the claimant was hired, she was told by the President about a conflict of interest and the need for confidentiality in her work so that in effect, her husband's business would not secure any information from the claimant as to the function of Focus Communications as a subsidiary of Printers II.

The claimant shared an adjacent office to Timothy Walsh who is a young salesman. Walsh was not interested in seeking new employment. While he was cordial to the claimant and they did discuss work matters, he never brought up the subject about looking for another job. The claimant knew that her husband's firm, The Wessel Company, Inc., was looking for a new salesman. She then told Timothy Walsh of the opportunity at The Wessel Company. She never urged him to leave his employment with Printers II, but he did thereafter make an appointment to see the claimant's husband about a job. When the employer found out about this, the claimant was fired. The employer believed that the claimant breached an employment relationship, and that she had in fact had solicited an employee away from Printers II. The fact is immaterial that Walsh never actually went to the Wessel Company because his salary expectations could not be met. The claimant was fired because the employer believed that she had breached the confidentiality of her situation and presented a conflict of interest when she tried to get Mr. Walsh to apply for the job.

While the employer has a handbook of rules and regulations at the work place, it does not cover this specific situation. The Personnel Administrator states that generally there is a regulation which requires that there should be no solicitation at work.

CONCLUSIONS OF LAW

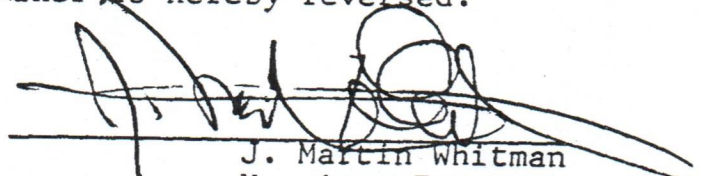
The Hearings Examiner has considered all of the evidence presented and studied the exhibits. The claimant was in a responsible position. The claimant and the President of the employer had discussed the need for confidentiality and the claimant knew that she had to scrutinize her activities in light of the fact that her husband was employed by a competitor firm, The Wessel Company. Nevertheless, without being asked, the claimant elected to bring up the subject to Timothy Walsh about a vacancy or a job opportunity at The Wessel Company. The context of this situation must be first understood to understand the Hearings Examiner's findings. Timothy Walsh was on good terms with the claimant since they shared adjacent offices at work. They discussed non-work-related incidents. Timothy Walsh volunteers in his own testimony that he never once asked the claimant about a job opportunity and never indicated that he was looking for another job. In fact, he was not doing so. He was not actively seeking any employment at the time. The claimant, on the other hand, without being invited, brought up the subject and encouraged Timothy Walsh by telling him of a business opportunity for him at her husband's company. At that point, the claimant was clearly acting against her employer's interest. She described Walsh as an aggressive young man who had sales talent. Obviously, he had these same talents and was of use to his current employer in that same way. The claimant knew this. She took the initiative to suggest that he take advantage of a business opportunity for himself at The Wessel Company. In doing so, her conduct clearly falls within the definition of gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She obviously had an inherent obligation to her employer. A common sense rule of behavior have been that she should not have discussed any opportunities for employment at The Wessel Company with any employee of Printers II. She raised the subject in the first place without any encouragement by Timothy Walsh. She was clearly looking to assist her husband's firm to the detriment of Printers II. Her conduct in this way was clearly a deliberate and willful disregard of standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest and, hence, constitutes gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. It is totally immaterial that this only occurred on one occasion and it is also totally immaterial that the employer never produced a specific rule to a printed manual. It is the totality of the claimant's conduct which indicates and clearly shows gross misconduct. She did not breach a written rule of the employer, what she did breach was a common sense obligation that she owed to the employer and in that obligations her conduct flowed to the detriment of the employer.

The Hearings Examiner might have viewed the claimant's conduct as something other than gross misconduct had Walsh initiated conversations with the claimant seeking the claimant's counsel and friendly advise as a co-worker as to where he might in fact have found further employment. This never occurred. This case is not similar to the care of Benvenga v. Sapero and Sapero 720-BH-84, where the Board of Appeals where the claimant passed along to 'a friend available information concerning a job opening and, thus, Board of Appeals held that the claimant's actions did not constitute misconduct. In this case, the claimant's actions demonstrate that she was solely motivated to help her husband's business interests in soliciting Walsh as a salesman for the Wessel Company in the future. In doing so, the claimant's conduct clearly falls within the definition of gross misconduct and the Hearings Examiner has no alternative, but to find that the claimant's conduct is disqualifying under Section 6(b) of the Law.

DECISION

The claimant was discharged for gross misconduct connected with her work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning April 7, 1985 and until the claimant becomes re-employed and earns at least ten times her weekly benefit amount (\$1750) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is hereby reversed.



J. Martin Whitman
Hearings Examiner

Date of hearing: June 27, 1985
cdg/0659
(Ms. Clagett)
Cassette #4474 & 4475
Copies mailed on July 30, 1985 to:

Claimant
Employer
Unemployment Insurance - Wheaton

Ginsburg, Feldman, & Bress
Attn: Edward Tolchin,
Jennifer R. Levin,
Attorneys at Law