



Maryland

Department of Economic & Employment Development

William Donald Schaefer
Governor
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Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

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

- D E C I S I O N -

Decision No.:

1432-BR-93

Date:

August 23, 1993

Claimant:

Neville L. Daley

Appeal No.:

9308139

S.S. No.:

Employer:

Vaccaro's Inc.

L. O. No.:

43

Appellant:

EMPLOYER

Issue:

Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires

September 22, 1993

- A P P E A R A N C E S -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact and conclusions of law of the Hearing Examiner.

At the hearing before the Hearing Examiner, the Employer withdrew its own appeal and dropped its protest against the claimant receiving benefits. The case proceeded anyway, since the claimant had also filed an appeal. The claimant provided testimony which was not questioned by the employer on cross examination. Then, when the Hearing Examiner ruled in favor of the claimant, the Employer appealed to the Board.

The Board adopts the finding of fact of the Hearing Examiner, with the following corrections. The claimant did not call the employer to notify him that he would not be reporting to work as scheduled on March 19th. The claimant had made specific arrangements to return to work on March 19th. He did not return because he heard a statement from a co-worker that the Employer would be closed. He neither called nor appeared on the 19th.

On the 22nd, his next scheduled workday, the claimant also did not appear for work. He did call and state that he had an appointment with the Immigration and Naturalization Service and would not be in. This was the first notice the claimant gave that he would not be in the day.

As the Board has often ruled in the past, those employees who miss a lot of time, even for excused reasons, have a heightened duty not to miss additional time for unexcused reasons and to conform to the employer's notice requirements. Birmingham v. S. Schwab Company (333-SE-86).

Since the claimant had made arrangements with the employer to return on the 19th, his failure to appear or call on that day constitutes misconduct. The claimant was acting unreasonably in taking the word of a co-worker that the employer would not be open on a scheduled workday. The claimant's failure to notify the Employer of his Immigration and Naturalization Service appointment until March 22nd, the day of the appointment, was also unreasonable. The claimant was in town since March 18th and did not make a reasonable effort to contact the employer prior to taking off the 22nd. This is also misconduct, especially when the great amount of previous absenteeism is taken into account.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article. He is disqualified from receiving benefits

from the week beginning March 7, 1993 and the 9 weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Donna P. Watts

Associate Member

K:DW

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - Wheaton

 **Maryland**
Department of Economic &
Employment Development

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— D E C I S I O N —

May 24, 1993

Claimant: Neville L. Daley

Appeal No.: 9308139

S. S. No.:

Employer: Vaccaro's Inc.

L.O. No.: 43

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct connected with the work within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1003.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

June 8, 1993

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Nicholas Vaccaro, Vice
President

FINDINGS OF FACT

The claimant worked as a delivery person/driver for Vaccaro's, Incorporated, September 1, 1984 until March 9, 1993, earning a wage of 11.37 an hour. He worked forty hours per week.

The claimant's mother became ill and was hospitalized in Holly Cross Hospital in Jamaica. The claimant knew that his mother was gravely ill. He requested a leave of absence for twelve days, from February 1st through February 12th to visit his mother. The claimant stayed in Jamaica until the 15th; he returned to work on February 17th.

The claimant's mother died on March 4, 1993. He requested another leave of absence to go to Jamaica from March 10th through March 18th. It was agreed that the claimant would return to work on March 19, 1993. The claimant's plane was unexpectedly delayed on March 18, 1993; he arrived at home at 10:00 p.m. that evening. The claimant called the employer on March 19, 1993 to notify the employer that he would not return until March 22, 1993. Another employee answered the phone and told the claimant that the business was closed on the 19th. The claimant was unable to reach the employer. On March 22, 1993, the claimant called the employer to give notice that he could not report for work that day because he had a 9:00 appointment with the Immigration and Naturalization Service. The employer told the claimant that his services was no longer needed and discharged the claimant from employment.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1003(a)(b) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty or a course of wrongful conduct committed by an employee within the scope of the employment relationship, during hours of employment or on the employer's premises. 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 misconduct within the meaning of the Statute.

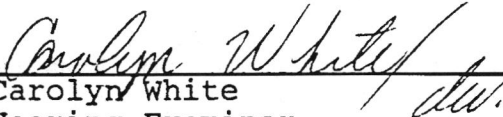
The claimant called to give notice that he would not report to work on March 19, 1993 and March 22, 1993. He complied with the employer expectations. His behavior does not demonstrate misconduct. The employer had failed to meet its burden of proven that the claimant behavior constituted a transgression of some established rule or policy of the employer or commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct.

DECISION

It is held that the claimant was discharged but not for misconduct connected with the work, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1003. No disqualification is imposed based on his separation from his

employment with Vaccaro's, Incorporated. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Clams Examiner is reversed.



Carolyn White
Hearing Examiner

Date of Hearing: 5/13/93
dw/Specialist ID: 43728
Cassette Attached to File
Seq. 01
Copies mailed on: 5/24/93 to:

Claimant
Employer
Unemployment Insurance - Wheaton (MABS)