

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	1461-BH-91
	Date:	Nov. 19 , 1991
Claimant: Carroll Thompson	Appeal No.:	9108548
	S. S. No.:	
Employer: Washington Metro Area Transit Authority ATTN: Catalina Bosch, Pers.	L. O. No.:	7
	Appellant:	EMPLOYER
Issue:		
		Whether the claimant was discharged for gross misconduct or misconduct, connected with his work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MERYLAND. 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

December 19, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant not present

Bruce Heppen, Esq.

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 Economic and Employment Development's documents in the appeal file.

At the hearing before the Board of Appeals, the employer introduced two affidavits from employees with knowledge about the union contract and their Employee Assistance Program, and also offered a copy of the Washington Metropolitan Area Transit Authority Interstate Compact.

One of the issues in this case was whether the employer, a Washington company that has offices in Maryland, is bound by Maryland law, specifically Section 17-214.1 of the Maryland Health General Article dealing with an employer's duties when a drug test is given. The employer has presented sufficient evidence to show that it is not covered by the Maryland Health General Article.

FINDINGS OF FACT

The claimant was employed by the Washington Metro Area Transit Authority for approximately ten years as a mechanic. He was discharged for violating the employer's substance abuse policy. In June, 1989, the claimant was randomly tested for drugs, in accord with the union agreement, and was found to be positive for cocaine. He was not fired at that time, but was required to enroll in an Employee Assistance Program, since it was his first offense. One of the conditions of his remaining employed was that he not test positive on any further drug tests.

On or about February 16, 1990, the claimant was screened during a six-month random testing and again was found positive for opiates and cocaine metabolizes. As a result of failing this test, he was discharged. At the time he was discharged, the claimant knew that he was subject to random tests and knew that one of the conditions of his remaining employed was that he not test positive for any drugs.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 8-1002 of the Labor and Employment Article. The claimant's positive results from the drug test, especially

after having known that the only way for him to keep this job was to stay drug free, is a deliberate and willful disregard of standards of behavior that his employer had a right to expect, showing a gross indifference to the employer's interest.

The Washington Metropolitan Area Transit Authority Compact is an agreement between Virginia, Maryland and the District of Columbia. Under its terms, this employer is free to:

Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of this authority, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of officers and employees without regard to the laws of any of the signatories. (See Employer's Exhibit #B-3.)

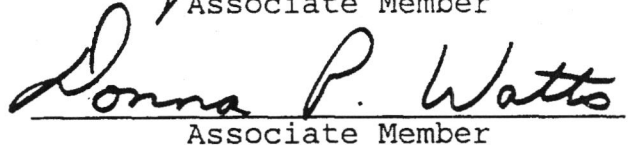
Therefore, although the employer did not follow the requirement of the Maryland Health General Article, it was not required to and failure to do so does not invalidate its evidence of the claimant's failure to pass the drug test.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning February 25, 1991 and until he earns at least ten times his weekly benefit amount (\$2,150), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

HW:W

kbm

Date of Hearing: October 8, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Bruce Heppen, Esq.
WMATA

UNEMPLOYMENT INSURANCE - COLLEGE PARK

 **Maryland**
Department of Economic &
Employment Development

William Donald Schafer, Governor
J. Randall Evans, Secretary

William F. Morrison, Chief Hearing Examiner
Lawson W. Steward, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

	Date:	Mailed: 6/17/91
Claimant: Carroll Thompson	Appeal No.:	9108548
	S. S. No.:	
Employer: Washington Metro Area Transit Authority Attn: Personnel L. Young	L. O. No.:	07
	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 TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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

June 8, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Present - accompanied by Denise
Thompson, Witness

FOR THE EMPLOYER

Represented by
Catalina Bosch,
Personnel Generalist,
and Edna Baldwin,
EAP Counselor

FINDINGS OF FACT

The claimant was employed as a mechanic for ten years and was discharged effective February 27, 1990 for violation of the

employer's substance abuse policy. Any penalty imposed has been self-served. The employer related that while on the Employee Assistance Program, the claimant was attested for detectable levels of drugs in his body on February 15, 1990 and the test was positive for cocaine metabolize and opiates. The claimant was fired immediately after the employer received laboratory results. At that time, the employer did not provide the claimant with a copy of the lab test results or inform him that he was permitted to request independent testing of the same sample for verification of the test result. The claimant had a test done of a new sample on the following day, which was negative for all drugs screened.

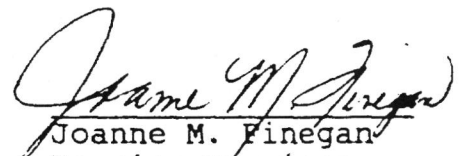
CONCLUSIONS OF LAW

Annotated Code of Maryland, Health General Article Section 17-214.1, was in effect in February, 1990. That Law requires the employer to provide an employee who has tested positive for controlled substances or alcohol a copy of the lab test results, the employer's written policy on substance abuse, notice of the employer's intent to take disciplinary actions, and notification that the employee may request independent testing of the same sample at his own expense. The claimant worked for this employer in Landover, Maryland, and it is concluded that this Law was applicable to the employer, and that the employer's failure to comply with the Law negates a finding that the claimant was discharged for misconduct or gross misconduct.

DECISION

The claimant was discharged, but not for misconduct or gross misconduct, connected with the work, within the meaning of Section 6 (c) or 6 (b) of the Maryland Unemployment Insurance Law. No disqualification is imposed, based on his separation from employment with Washington Metropolitan Area Transit Authority. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.


Joanne M. Finegan
Hearing Examiner

Date of Hearing: 6/11/91
cd/Cassette #5489
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COPIES MAILED ON 6/17/91 TO:

Claimant
Employer
Unemployment Insurance - College Park (MABS)