



Maryland

Department of Economic & Employment Development

William Donald Schaefer

Governor

Mark L. Wasserman

Secretary

Board of Appeals

1100 North Eutaw Street

Baltimore, Maryland 21201

Telephone: (410) 333-5032

Thomas W. Keech, Chairman

Hazel A. Warnick, Associate Member

Donna P. Watts, Associate Member

- DECISION -

Decision No.: 1600-BR-93

Date: Sept. 27, 1993

Claimant: Mitchell Baker

Appeal No.: 9310482

S.S.No.:

Employer: Quality Suppliers

L. O. No.: 3

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within-the meaning of §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 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, Rules*.

The period for filing an appeal expires

October 27, 1993

- 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.

In a case of a discharge, the employer has the burden of proving that the claimant was discharged for gross misconduct or misconduct. The employer here has failed to meet that burden.


The claimant was angry with the employer and consequently made an offhand remark to another driver to the effect that he felt like just leaving the truck in Connecticut and going home. The claimant did not intend for this to be a serious threat, nor was it made by the claimant to the employer. Further, the claimant did not abandon his truck. Nevertheless, when he reported back to work, he was terminated.

The Board concludes that this one remark, made to another driver, in the heat of anger, was not a threat, nor was it reasonable for the employer to perceive it as a real threat. Therefore, the claimant's discharge was not for gross misconduct or misconduct, within the meaning of LE, §8-1002 or §8-1003.

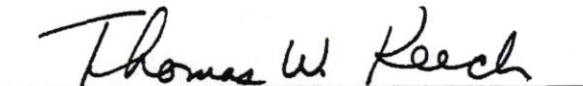
DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Quality Suppliers.

The decision of the Hearing Examiner is reversed.



Associate Member



Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark W. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 511
1100 North Eutaw Street
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Telephone: (410) 333-5040

— D E C I S I O N —

	Date:	July 12, 1993
Claimant	Mitchell E. Baker	Appeal No.: 9310482
	S. S. No.:	
Employer:	Quality Suppliers	LO. No.: 3
	Appellant	Claimant

Issue Whether the claimant was discharged for gross misconduct connected with the work within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1002.

— 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 BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL

July 27, 1992

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON
NOTE APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK.

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

Not Represented

FINDINGS OF FACT

The claimant was employed as a tractor trailer driver from November 1992 through April 18, 1993 at the rate of pay of nineteen cents per mile. The employer provides its drivers with a credit card in order to buy gas. The employees are responsible for paying the tolls and other personal expenses while they travel. The employer, however, reimburses its drivers for the tolls when receipts are produced. If the driver runs short, the employer provides for a

payroll advance. The payroll advance may be obtained once a week and the normal maximum rate of that advance is \$200.

On April 11, 1993, the claimant requested and received a payroll advance of \$350. From April 14, 1993, the claimant requested another payroll advance of \$100. The claimant requested the additional advance because he was in the course of driving a truck from Virginia to Connecticut and needed \$46.50 for tolls and \$32.50 to have a truck washed. The claimant felt the truck was dirty from a former driver and that it did need to be washed which the employer had promised to give him money for a wash. The employer denied an advance in the amount of \$100 but advanced the claimant an additional \$50.00. The claimant arrived in Connecticut on April 19, 1993 with the employer tractor trailer. The claimant was upset over the advances and told another driver for the employer that he felt like leaving the employer's truck in Connecticut and returning home. The claimant again called the employer on April 16, 1993 and requested the additional \$50.00 in advance which was given to the claimant by the employer. The claimant then returned with his truck to Maryland.

On April 18, 1993, the owner asked the claimant if he had told a fellow employee that he threatened to leave the company truck in Connecticut. The claimant advised that he had made that statement but that he was upset at the time over the dispute on the car wash and payroll advances. The employer advised the claimant that he could no longer trust him and therefore terminated the claimant.

CONCLUSIONS OF LAW

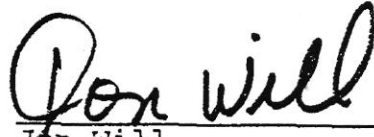
The Maryland Code, Labor and Employment Article, Title 8, Section 1002(a)(1)(i), provides that an individual shall be disqualified from benefits where he/she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has the right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

The evidence is clear that the claimant made the statement, threatening to leave the employer's truck Out-of-State and return home without that truck. The evidence is clear that the claimant did not leave the truck Out-of-State. However, the fact that the claimant made a threatening statement in regards to the employers property, demonstrates a deliberate and willful disregard of the standards which the employer has a right to expect and constitutes gross misconduct, within the meaning of the Maryland Code Labor and Employment Article, Title 8, Section 1002.

DECISION

The claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning April 18, 1993 and until the claimant becomes re-employed and earns at least twenty times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.



Jon Will
Hearing Examiner

Date of Hearing: June 15, 1993
lr/Specialist ID: 03261
(Cassette Attached to File)
Sequence No. 6
Copies mailed on July 12, 1993 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)
Recoveries - Room 413