

 **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.:	1602-BR-93	
	Date:	Sept. 27, 1993	
Claimant:	Walter L. Stinson	Appeal No.:	9314193
		S.S. No.:	
Employer:	Towson Inn Restaurant Corp.	L.O. No.:	1
	ATTN: Gus Stratakis	Appellant:	EMPLOYER
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, B 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.

The claimant was discharged because he physically attacked a co-worker. While it is true that the attack occurred after hours and off work premises, in this case, it was connected with the work.

The claimant physically assaulted a fellow cook as a result of a work-connected incident. The employer had told the claimant that fellow workers had reported that he was intoxicated and uncooperative on the job. The claimant apparently approached several employees, angrily inquiring if they were the ones that had reported him to the employer.

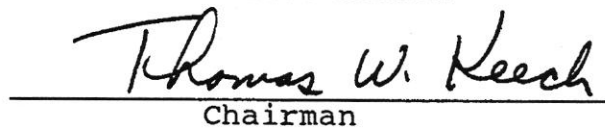
This intimidating behavior culminated in the physical assault on another cook. Therefore, this action was incident to the work and was a breach of duty to the employer. Misconduct need not occur during the hours of employment or on the employer's premises, in order to be work-connected, within the meaning of LE, §8-1002. See, Employment Security Board v LeCates, 218 Md 202 (1958).

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning August 2, 1992 and until the claimant becomes reemployed, earns at least ten times his weekly benefit amount (\$1,240) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

UNEMPLOYMENT INSURANCE APPEALS DECISION

WALTER L. STINSON

Before the:

**Maryland Department of Economic and
Employment Development
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(401) 333-5040

SSN

Claimant

vs.

TOWSON INN RESTAURANT CORP

Appeal Number: 9314193
Appellant: Employer
Local Office: 01 / Baltimore

Employer/Agency

August 6, 1993

For the Claimant:

For the Employer: PRESENT, Gus James Stratakis

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 -1002.1 (gross/aggravated misconduct connected with the work) or 1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant was employed with Towson Inn Restaurant Corporation from December 17, 1991 until August 4, 1992. The claimant was employed as a line cook and earned \$6.00 an hour.

The claimant was discharged from employment on August 4, 1992 due to his involvement in a fight with a co-worker on August 3, 1992. The fight occurred when the claimant and the co-worker were not working and the fight occurred off of the premises of the employer.

Based upon information gathered by Gus Stratakis, owner, it was determined that the claimant was the aggressor. Mr. Stratakis became concerned about the safety and well-being of the claimant and the co-worker, especially since each were employed as cooks, and if another fight were to begin at

work, they might seriously injure themselves, each other, or other employees. The claimant and the co-worker had easy access to knives and other items that may cause harm.

It should be noted that the claimant was not present for the hearing.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 100, (ii) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. 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 gross misconduct within the meaning of the Statute.

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.

EVALUATION OF EVIDENCE

In a case involving a suspension or discharge of an employee, the burden of proving gross misconduct or misconduct rests with the employer. The employer's burden also extends to proving that the alleged gross misconduct or misconduct was "connected with the work." In determining whether an employee's actions are connected with the work, the following should be considered: whether there was a breach of duty to the employer; whether the act occurred during the hours of employment; whether the act occurred on the employer's premises; whether the act occurred while the employee was engaged in his work; and whether the employee took advantage of the employment relationship in order to commit the act. Employment Security Board v. LeCates, 218 Md. 202, 145 A.2d 840 (1958).

To meet the "connected with the work" requirement, the misconduct must be incident to the work or directly related to the employment status. The mere fact that the misconduct adversely affects the employer's interests, is not enough. The term "work" is not restricted to actual services an employee is hired to perform, but it may properly comprehend other obligations, such as the duty to obey orders, or to refrain from absenteeism. There is a general duty of loyalty to one's employer. Fino v. Maryland Employment Security Board, 218 Md. 504, 147 A.2d 738 (1969).

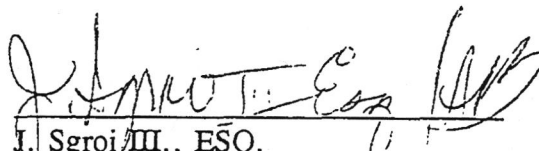
The preponderance of the credible evidence submitted at the hearing clearly indicates that the fight involving the claimant and the co-worker did not occur during the hours of employment and the act did not occur on the employer's premises. Moreover, the evidence clearly indicates that the act did

not occur while the employee was engaged in his work and there was no breach of duty to the employer. Thus, the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1002 or 1003. The determination of the Claims Examiner will be affirmed.

DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from his employment with Towson Inn Restaurant Corporation. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.


J. Sgroi III., ESQ.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal **either in person or by mail** which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **August 23, 1993**.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: July 29, 1993

gr/Specialist ID: 01039

Seq. No.: 001

Copies mailed on August 6, 1993 to:

WALTER L. STINSON
TOWSON INN RESTAURANT CORP
LOCAL OFFICE #01