



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383 - 5032

-DECISION-

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

	DECISION NO.:	171-BH-84
	DATE:	February 17, 1984
CLAIMANT: Teresa D. Fox	APPEAL NO.:	04644
	S.S. NO.:	
		'215
EMPLOYER: Brothers Place	L.O. NO.:	45
	APPELLANT:	CLAIMANT

ISSUE: Whether the Claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the Law; and whether the Claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE 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 March 18, 1984

-APPEARANCE-

FOR THE CLAIMANT:

Teresa Fox - Claimant
Garth Corbett - Legal Aid

FOR THE EMPLOYER:

Benjamin Lipsitz, -
Esquire

EVIDENCE CONSIDERED

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 into this case, as well as Department of Employment and Training's documents in the appeal file.

There is no evidence that the Claimant took the alleged missing funds from the Employer nor that the shortages occurred as a result of her negligence.

FINDINGS OF FACT

The Claimant was employed as a bar maid by Brothers Place from December, 1982 until she was discharged on January 30, 1983.

The Claimant was fired because the cash drawer that she used came up short on four occasions. The Claimant was not the only person who had access to the cash drawer. When the Claimant started and ended her shift, she did not count the money in the drawer, nor was she ever told to do so by the employer.

CONCLUSIONS OF LAW

The Board of Appeals concludes that there is insufficient evidence that the Claimant committed any acts amounting to misconduct or gross misconduct.

The fact that there were shortages in the Claimant's cash drawer, by itself, does not prove any misconduct on her part. The Claimant was not the person in sole control of the cash drawer, nor was she ever given specific instructions regarding the counting of cash before and after her shift.

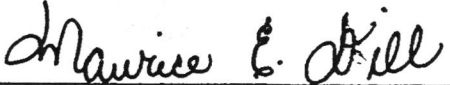
DECISION

The Claimant was discharged, but not for gross misconduct or misconduct, connected with the work within the meaning of §§6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment with Brothers Place. The Claimant may contact the local office concerning the other eligibility requirements of the Law.

The decision of the Appeals Referee is reversed.



Associate Member



Associate Member



Chairman



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 CALMAN R. HETTLEMAN
 Secretary

- DECISION -

DATE: May 12, 1983
 APPEAL NO.: 04644-EP/JAVA
 S. S. NO.:
 EMPLOYER: Brothers Place
 L. O. NO.: 45 (01)
 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON May 27, 1983

- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Marvin Miller, Manager; and Benjamin Lipsitz, Esquire

FINDINGS OF FACT

The claimant filed a claim for benefits, effective March 14, 1983. Her weekly benefit amount was determined to be \$68.00.

The claimant was employed by the Brothers Place as a barmaid from December, 1982 until January 30, 1983. She was paid \$25.00 a shift.

The claimant, on December 27, 1982, was counseled, because there

W:D:K
dp

DATE OF HEARING: January 31, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Garth Corbett
Attorney at Law
Legal Aid Bureau, Inc.

Benjamin Lipsitz, Esquire
Baltimore Federal South Bldg., Suite 102

UNEMPLOYMENT INSURANCE - PIMLICO

was a shortage in her drawer.

On January 19, 1983, the claimant's drawer was counted before she started work, and also after work, and it was found that she was \$24.00 short. She was counseled about this. On January 20, 1983, the claimant was \$11.00 short. On January 22, 1983, she was \$14.00 short. On January 23, 1983, \$16.00-short. And, on January 24, 1983, she was \$59.00 short. On each day, her drawer had been counted before she went to work and also afterwards, and she had been cautioned by the employer about the shortages. The employer reached the conclusion that the claimant was taking money without authorization. She had asked the employer, during this week, for an advance of \$75.00 to meet expenses. The employer discharged the claimant.

The claimant did not deny that the funds were missing. Her explanation was that the employer had a poker game for patrons, and when a patron won the game, he would pay them a stipulated amount. This amount could be from \$5.00 to \$400.00. She alleged that she was so busy that she did not put chips in the drawer to cover the poker game winnings.

The evidence presented by the claimant was found not to be acceptable.

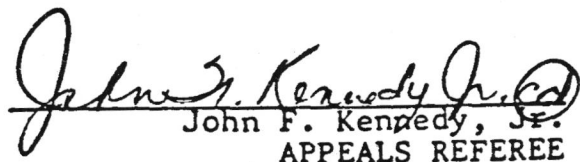
CONCLUSIONS OF LAW

It is found that the claimant was discharged for unauthorized taking of the employer's monies. This must be considered to be a discharge for gross misconduct connected with her work within the provisions of Section 6 (b) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner must be reversed, as this cannot be considered a discharge for misconduct connected with the work within the meaning of Section 6 (c) 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 from the week beginning January 30, 1983 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$680), and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.


John F. Kennedy, Jr.
APPEALS REFEREE

Date of Hearing - 5/4/83
(2536/Hampton)

COPIES MAILED TO:

Claimant -

Employer

Unemployment Insurance - Pimlico

Benjamin Lipsitz, Esquire
ATTORNEY AT LAW