



# 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.:	1845 -BH-92	
	Date:	October 16, 1992	
Claimant:	Terrance J. Boyd	Appeal No.:	9207246
		S. S. No.:	
Employer:	Cantwell Cleary Co. , Inc. ATTN: John MacGregor	L O. No.:	7
		Appellant:	EMPLOYER
Issue:	whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article.		

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**— 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

November 15, 1992

THE PERIOD FOR FILING AN APPEAL EXPIRES

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**— APPEARANCES —**

FOR THE CLAIMANT:

Terrance J. Boyd - Claimant

FOR THE EMPLOYER:

John MacGregor -  
Vice President

## 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 the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed as a truck driver from October, 1990 until his discharge in February of 1992.

The employer comes under the jurisdiction of the United States Department of Transportation with regards to drug testing requirements and procedure. Pursuant to these federal regulations, 49 C.F.R. 540 (1991), the employer had a drug test performed on a sample provided by the claimant. This sample tested positive for cocaine.

The federal regulations do not require the employer to inform the claimant that he can request a second testing of the same sample. The claimant may request a second testing, but did not do so in this case.

The claimant was discharged as required by the Department of Transportation for testing positive for cocaine.

## CONCLUSIONS OF LAW

An issue was raised as to whether drug test results obtained properly under federal regulations, but under procedures which do not provide for a retest of the sample in the manner required by Maryland law, may be relied upon as evidence in these cases. The Board does not have to reach that issue, however, since the claimant does not deny that the results of the test are accurate.

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and wilful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

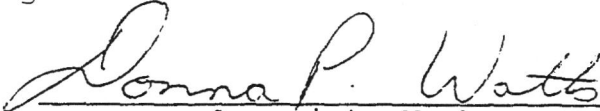
The claimant's testing positive for cocaine is gross misconduct as defined in §8-1002 of the law,

## DECISION

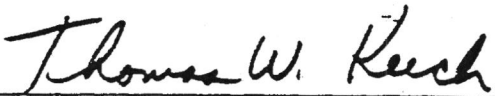
The claimant was discharged for gross misconduct, connected with the work as defined in §8-1002 of the Labor and Employment Article. He is disqualified from receiving

benefits from the week beginning March 1, 1992 and until he becomes reemployed, earns ten times (\$2230.00) his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is affirmed.

  
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Associate Member

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Chairman

D:H:K

kmb

DATE OF HEARING: August 11, 1992

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK