

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keesch
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, G
J. Randall Evans, S

Decision No.: 185-BH-88
Date: March 4, 1988
Appeal No.: 8711263
S. S. No.:
Claimant: Jerome Shird
Employer: F & H Contractors, Inc.
ATTN: L. E. Horn, President
Baltimore, MD 21230
L.O. No.: 1
Appellant: EMPLOYER
Issue: Whether the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

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

April 3, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Jerome Shird, Claimant
Charlene Shird, Claimant's wife

FOR THE EMPLOYER:

Leroy Horn,
President

EVALUATION OF 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.

The claimant and the witness for the employer gave conflicting testimony regarding some of the facts in this case. The Board finds the testimony of the employer to be more credible than that of the claimant.

FINDINGS OF FACT

The claimant was employed as a laborer with S & H Contractors, Inc. for approximately two years, until he was discharged on or about September 13, 1987. The claimant and one of the owners of the company, Leroy Horn, occasionally had disagreements on the job. On the claimant's last day of work, he made a disparaging remark about the mops they were given to use in their work. When Mr. Horn questioned the claimant about his complaint, the claimant indicated in a rude manner that if the employer did not like what the claimant had said, he could fire him. A short time later, this discussion began again, and this time the claimant used an obscene four-letter word, informing the employer that he could fire him if he didn't like what he said. As a result of this incident, the claimant was discharged.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law. The claimant was insubordinate to the employer by his use of an obscene word and by daring the employer to fire him.

Given the somewhat informal working conditions and the fact that the claimant felt free in the past to have disagreements with the employer, the Board does not find that the claimant's behavior in this case rose to the level of gross misconduct within the meaning of Section 6(b) of the law. See, Jones v. Perdue, 196-BR-86.


DECISION

The claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland

Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning September 13, 1987 and the nine weeks immediately following.

The decision of the Hearing is reversed.


Associate Member


Chairman

W:K

kbm

Date of Hearing: March 1, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

— DECISION —

Date: Mailed December 28, 1987
Appeal No: 8711265
S. S. No.:
Employer: F & H Contractors, Inc. L.O. No.: 01
Appellant: Claimant
Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) 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 THE APPEALS DIVISION, **ROOM 515**, 1100, NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

January 12, 1988

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present
Charlene Shird, wife, observer

FINDINGS OF FACT

The Claimant filed an original claim for unemployment insurance benefits effective September 20, 1987.

The Claimant was employed by F & H Contractors, Inc., for almost two years his last job classification as a laborer at an hourly wage rate of \$6.00. He last worked for this employer on or about September 13, 1987.

The Claimant on his last day of work requested from his employer a certain amount of materials in order to finish up a specific job. The employer at that time told the Claimant to leave his office. The Claimant returned to his work area when he made a remark pointing out some materials on the floor stating that the employer must have gotten the materials wholesale for it was not a type of material that were new and should have been used on the job. This wise crack was only directed to the Claimant's co-workers but was overheard by the employer. The Claimant was willing to take the materials he made a wise crack about and to load it on his truck and use the material at his job. The employer became upset over this wise crack and terminated the Claimant.

CONCLUSIONS OF LAW

The wise crack made was merely directed to co-workers concerning the materials and its shape lying on the floor, the Claimant's actions did not demonstrate any acts of misconduct in connection with one's work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. In the instant case, the Claimant was willing to put the materials in his truck and to use them at his job. The remark was not directed to the employer who overheard the wise crack.

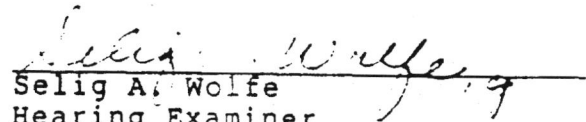
Under the above facts, the determination of the Claims Examiner shall be reversed.

DECISION

The Claimant was terminated from his employment but not for any acts demonstrating misconduct in connection with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

The disqualification imposed for the week beginning September 13, 1987 and for the nine weeks immediately following, thereafter, is rescinded.

The determination of the Claims Examiner is reversed.


Selig A. Wolfe
Hearing Examiner

Date of Hearing: November 19, 1987
Cassette: 7089
Specialist ID: 01067
Copies Mailed on December 28, 1987 to:
Claimant
Employer
Unemployment Insurance - Baltimore (MABS)