

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.:	192 -BH-91
Date:	Feb. 14, 1991
Claimant: Beth M. Gilbert	Appeal No.: 9010799
	S. S. No.:
Employer: Polo Grill	L. O. No.: 45
	Appellant: EMPLOYER
Issue:	Whether the claimant was discharged for misconduct, connected with her 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 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES

March 16, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant not present

Gail Kaplan, 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 of 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 waitress with the Polo Grill from approximately May 29, 1990 until her discharge on or about July 1, 1990. She worked for the employer part time and also attended school.

On or about the evening of June 25, 1990, the claimant was waiting on a table of four people. One of the owners of the Grill, Gail Kaplan, was acquainted with the claimant's customers. Therefore, she approached the claimant and told her to provide the table with free after dinner drinks, courtesy-of the house. The proper procedure in such a situation is for the drinks to be rung up on the tab and then indicate that the customers were not charged.

The claimant apparently misunderstood and thought that if the customers did not order after dinner drinks, that the owner wanted her to not charge them for their before dinner cocktails. Therefore, she did not charge them for the cocktails, nor did she ring up the cocktails on their check.

When the other owner of the Grill, Mrs. Kaplan's husband, discovered that the customers' drinks were not rung up, he became angry with the claimant and fired her. However, the claimant was allowed to work for two more days after the incident before she was discharged.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged from her job for reasons that do not amount to misconduct under Section 6(c) of the law. The Board has held that an instantaneous lapse in the performance of one's job duties does not constitute misconduct, Darnell v. St. Mary's Nursing Home, 549-BH-83. Similarly, in Hall v. Maryland Messenger Service, 410-BH-86, the Board found that a single incident of slight negligence does not amount to misconduct.

The rulings in these cases are applicable in this case. Although the claimant should have rung up the drinks on the customers' tab, this one slight lapse in her performance is not sufficient for a finding of misconduct connected with her work, within the meaning of Section 6(c) of the law. Therefore, the decision of the Hearing Examiner is affirmed.

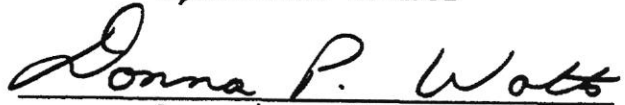
DECISION

The claimant was discharged, but not for misconduct, connected with her work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her disqualification from employment with the Polo Grill.

The decision of the Hearing Examiner is affirmed.



Associate Member



Associate Member

HW:W

kbm

Date of Hearing: December 4, 1990

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST