



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

DECISION

Decision No.: 200 -BH-87

Date: March 19, 1987

Claimant: Clister B. Walker

Appeal No.: 8610884

S. S. No.:

Employer: Domino's Pizza of Md., Inc.

L.O. No.: 1

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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

April 18, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

APPEARANCES

FOR THE CLAIMANT:

Clister Walker, Claimant

FOR THE EMPLOYER:

Gayle Gray, ADP;
Rick Lohr, Mgr.

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 Employment and Training's documents in the appeal file.

Employer Exhibits B-3, 4, 5 and 6, admitted into evidence at the hearing before the Board, are identical statements from four different employees of Domino's Pizza. Although these documents were submitted by the employer to show the current policy of the employer, the Board finds that these documents actually show that the policy was, at best, ambiguous, and thus supports the claimant's testimony that she believed the policy hadn't changed and that she understood that the half-hour delivery guarantee did not extend to all areas of UMBC. Specifically, the portion of the statement that says, ". . . and that we do honor the Domino's Pizza \$3.00 guarantee to the campus (especially to central areas such as lobbies)" reveals the ambiguity of this policy. [Emphasis added.]

FINDINGS OF FACT

The claimant was employed by Domino's Pizza of Maryland as a delivery person from February 25, 1983 until she was discharged on or about August 13, 1986. During the course of her employment, she had two on-the-job accidents, resulting in her filing workmen's compensation claims. Consequently, she was absent from work from June, 1985 until November, 1985 and then again after the second accident from December, 1985 until July, 1986.

When she returned to work in July of 1986, the store had a new manager, Rick Lohr. The new manager had made certain changes, including tightening up the employer's policy regarding giving a \$3.00 discount if a pizza was delivered more than a half-hour after it had been ordered. Prior to this time, the employees only gave the discount if the customer requested it. Under the new policy, if the pizza was more than a half-hour late, the delivery person was to give the discount to the customer, even if the customer did not specifically ask for it.

However, the policy regarding deliveries to the dorms of the UMBC campus remained essentially the same. That was, that the pizzas were not guaranteed up to the dorms and certain other areas of UMBC because it took too long to find the specific

rooms where the customers were located. Therefore, it was the claimant's understanding when she returned that that policy had not changed.

On or about August 13, 1986, the claimant made a delivery to the campus, more than a half hour after the pizza had been ordered. The customer requested the \$3.00 discount. The claimant informed the customer that he was not entitled to it under company policy. As a result of this dispute, the customer made a complaint about the claimant to her supervisor, and when she returned from her deliveries, she was discharged, primarily because of this incident.

The Board does not find as a fact that the claimant was discharged either due to a long history of failing to comply with company policy or deliberately failing to comply with company policy on the night in question (as alleged by the employer), nor does it find that she was discharged because she had filed two workmen's compensation claims (as alleged by the claimant).

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged, but for actions that do not amount to misconduct or gross misconduct within the meaning of Section 6(c) or 6(b) of the Maryland Unemployment Insurance Law. Since the Board finds that the employer's policy was ambiguous at best, and that the claimant reasonably believed she was following company policy, the Board concludes that the employer has failed to meet its burden of proving that the claimant deliberately engaged in any misconduct. While there is some documentary evidence of a prior warning for failure to follow company policy, this warning occurred in March, 1985 and was not the basis of the claimant's discharge. The ambiguity of the employer's policy, as demonstrated by its own documentary evidence, supports the claimant's allegations that she genuinely believed she understood what the policy was and was simply carrying it out. Therefore, the decision of the Hearing Examiner will be 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 separation from employment with Domino's Pizza of Maryland, Inc.

The decision of the Hearing Examiner is affirmed.


Associate Member


Chairman

W:K

kbm

Date of Hearing: February 10, 1987

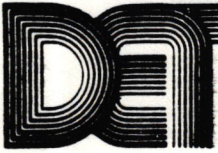
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CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS

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MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed 10/28/86

Claimant: Clister B. Walker

Appeal No.: 8610884

S. S. No.:

Employer: Domino's Pizza of Md., Inc. L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Section 6(b) or 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 12, 1986

APPEARANCES

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Gabreille Allen-
Hearing
Representative
ADP

FINDINGS OF FACT

The claimant worked as a Pizza Delivery Person from February 25, 1983 until August 13, 1986. She was paid \$4.15 an hour, plus

commission and tips. She hurt herself twice in an on-the-job accident and filed a Workmen's Compensation claim. These two injuries occurred during June, 1985. She was out of work due to these injuries from June until November 1985 and from December 1985 to July 1986.

There is a policy at the place of employment that if pizzas are not delivered within thirty minutes, that there is a \$3.00 discount.

Sometime around the last day that the claimant worked, she received an order for delivery of a pizza at the University of Maryland, Baltimore County Campus.

The customer believed that the pizza may have been delivered late. The customer argued that he wanted a discount. The claimant stated that her interpretation of company policy was that discounts were not given, even for late deliveries to certain places in the University of Maryland, Baltimore County Campus. The reason that the discount policy for late delivery did not apply to certain portions of UMBC Campus was that the delivering person would have to find the specific floor and room location where the party was before making delivery, and this required additional time.

In any event, when the claimant returned to work on the next work day, Rick, the manager, told her she was being sent home and fired because she had argued with the customer and did not stand up to the Dominic Pizza guarantee.

The claimant denies that she argued with the customer and denies that she failed to correctly interpret any pizza delivery time interval guaranteed discount program.

EVALUATION OF THE EVIDENCE

Unfortunately, the only evidence presented is that of the claimant, and therefore, this must be the sole basis for the appeals decision. The employer elects not to appear but to present its hearing representative instead. Since no evidence is produced by the employer to explain why the claimant was discharged or to explain the pizza guaranteed delivery discount program, the sole basis of the decision has to be the evidence presented by the claimant.

CONCLUSIONS OF LAW

There is insufficient evidence to show either misconduct or gross misconduct connected with the work within the meaning of Section 6 of the Maryland Unemployment Insurance Law as a basis for discharge from employment. The sole testimony presented by the claimant who maintains, in effect, that she did nothing wrong. She did not argue with the customer, and she did not fail to adhere to a company policy. She believes and so states that the company policy had exceptions with regards to the delivery time and whether or not a discount would be given in connection with certain part of the UMBC Campus. In the absence of probative evidence that could have been produced by the employer, the Hearing Examiner is compelled to find that there is no evidence to support a finding of either misconduct or gross misconduct, and hence, must reverse the determination of the local office.

DECISION

The claimant was discharged from employment, but not for either misconduct or gross misconduct connected with the work, within the meaning of Section 6 of the Maryland Unemployment Insurance Law. There is no denial of Maryland Unemployment Insurance benefits.

The determination of the Claims Examiner is hereby reversed in favor of the claimant who may now consult her local office with regard to all of the other eligibility factors of the Law.


J. Martin Whitman
Hearing Examiner

Date of hearing: 10/21/86
Cassette: 6977
hf (Parker)

Copies mailed on 10/18/86 to:

Claimant
Employer
Unemployment Insurance - Baltimore

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