Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5032

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

— DECISION —

Decision No.: 2079-BR-92

Date: Nov. 25, 1992

Claimant: Anthony White

Appeal No: 9207570

S. S. No.:

Employer: Steven Windsor, Inc.
ATTN: Jeffrey Glaser, CEO

L. O. No.: 7

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of §8-1002 or 8-1003 of the Labor and Employment Article.

— 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, 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 December 28, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant was employed for seven years as a salesman for the employer, a retail clothing business. In early 1992, a theft occurred in the business, and the claimant was accused of theft. The claimant consulted a lawyer, and no formal charges or accusations had been brought against the claimant for this event, as far as the record shows. In March of 1992, however, the claimant was called in and suddenly discharged, based on three incidents of alleged sexual harassment of fellow employees.

The claimant's testimony was repeatedly cut off by the Hearing Examiner; but, even based on the evidence presented, the Board finds that the employer did not meet its burden of proving sexual harassment of co-employees.

Witness Miller testified that the claimant suggested that she give up her relationship with her boyfriend in North Carolina, on the theory that long-term relationship don't work out. This statement on the claimant's part simply does not amount to sexual harassment. Repeated intrusive personal remarks about a co-employee's sexual life can certainly amount to sexual harassment if they are perceived as offensive and if the subject of the remarks (or the employer) makes it known to the speaker that the remarks are offensive. But there is no evidence of repeated remarks here, nor is there proof that the witness was offended, much less proof that the claimant was made aware that anyone was taking offense.

Witness Boegdes worked with the claimant on three occasions. On the last occasion, he asked her if she had ever been pregnant or cheated on her boyfriend. When asked "Will you clock me out?" he replied "If you come back here, I'll clock you out." Once again, the claimants remarks were not obviously offensive, and if offense was taken, it was never communicated to the claimant until his discharge. The Board does not consider this as sexual harassment.

Witness Agee testified to more substantial action on the part of the claimant. He attempted to kiss her once, told her that he loved her and grabbed her arms one time. The occasion of touching her arms was a gesture of sympathy for the witness, who was crying over something that someone had said, something which was not revealed at the hearing but which appeared to be non-sexual in nature.

No more details were provided about the attempted kiss, though the Board will assume that the advance was unwelcome. There was no evidence that the unwelcome advance was repeated.

When this witness complained in writing about the claimant, the substance of the complaint did not concern sexual harassment at all but his overly critical and erratic supervisory behavior. Although the Board does believe that the claimant did the things to which this witness testified, there is no evidence that they were repeated or blatantly offensive. This witness's main complaint was poor supervision on the part of the claimant.

Although the third allegation was much more serious than the other two, the employer has not provided any clear evidence of misconduct. Although this witness testified that she was offended, there is no evidence that she communicated this to the claimant, that the behavior was repeated, or that the employer gave him any reason to believe that his personality traits were offending other employees.

None of this evidence speaks well of the claimant's personality, or of his restraint in his conversations with co-employees. But the claimant is entitled to be told that his conduct or speech is deemed offensive by his co-workers, before he can be accused of sexual harassment.[1] The employer's previous failure to do so lends credence to the claimant's contention that these allegations were a cover for another reason for firing him. The Board does not have to reach this issue, however, since the employer has the burden of proof in a misconduct case and has not met that burden.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of §8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Steven Windsor.

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[1]This statement, of course, would not apply to conduct so blatant that any reasonable person would be offended.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

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kbm
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
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Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

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Telephone: (410) 333-5040

—DECISION—

Date: Mailed 6/17/92

Claimant: Anthony N. White

Appeal No.: 9207570

S. S. No.:

Employer: Steven Windsor, Inc.

L. O. No.: 07

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON July 2, 1992

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:
PRESENT, accompanied by
Alexander Middleton - witness

FOR THE EMPLOYER:
Jeffrey Glaser - CEO
Ralph Sinnot Asst. Mgr.
Susan Aggree Cashier
Helen Miller Cashier

Jennifer Boegdes -
Cashier
Keith Rosenberg,
Attorney

FINDINGS OF FACT

The claimant was employed by Steven Windsor, Incorporated from November, 1984 until February 14, 1992. He was paid $580 a week plus commission.

The claimant asked one young lady about her boyfriend. He learned that he was in North Carolina. The claimant advised her that long distance relationships didn't work out and advised her to break up with him.

The claimant embraced the arms of another young lady, maintaining that he loved her. This upset her.

The claimant also asked a third young lady who wasn't married, if she had been pregnant and if her boyfriend cheated on her, would she cheat on him. These three women reported the incidents to the employer and the claimant was discharged.

The employer's work rules are to the effect that Steven Windsor, Incorporated will not allow any form of sexual harassment within the work environment. Because sexual harassment interferes with work performance, creates an intimidating, hostile or offensive work environment or influences or intends to affect the career, salary, working conditions, responsibilities, duties or other aspects of career development of an employee or a prospective employee, or, creates an explicit or implicit term or condition of individual employment, it will not be tolerated. That sexual harassment, as defined in this policy, includes but not is limited to sexual advances verbal or physical conduct of a sexual nature (i.e. signs, posters, and the like) or requests for sexual favors.

CONCLUSIONS OF LAW

It is concluded in this case that the claimant did discuss matters which were personal and intimate with three young ladies employed by the employer, which were not in the line of business. He also touched one of the women, contending that he loved her. This was not proper office decorum.

The Maryland Code, Labor and Employment Article, Title 8, Section 1002 (a)(1)(i) provides that an individual shall be disqualified

from benefits where he/she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has a right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

It is concluded that the claimant's conduct was a deliberate and willful disregard of standards which the employer had a right to expect, and violated their policy regarding sexual harassment. His discharge under the circumstances is found to be a discharge for gross misconduct, connected with the work. The determination of the Claims Examiner will be reversed.

DECISION

It is held that the claimant was discharged for gross misconduct, connected with the work, within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1002. He is disqualified from receiving benefits from the week beginning February 9, 1992 until he becomes reemployed, earns at least ten times his weekly benefit amount ($2,230) in covered employment, and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: 6/4/92
Specialist ID: 07200
ab/CASSETTE IN FILE

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Claimant
Employer
Unemployment Insurance - College Park (MABS)