

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor

J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

	Decision No.:	219-BH-89	
	Date:	March 28, 1989	
Claimant:	David Queen, Jr.	Appeal No.:	8811081
		S. S. No.:	
Employer:	State of Maryland/MCIJ c/o Dept. of Personnel ATTN: Dorothy Ransom	L. O. No.:	2
		Appellant:	EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 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.

April 27, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Bob Sharp - Trooper
Steve Loroenzet -
Personnel Officer
Mike Gallagher -
Chief, U.I. Unit

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.

At the hearing before the Board of Appeals, the claimant was not present. The employer produced testimony from the state trooper who personally observed the claimant during the incident that led to his discharge.

FINDINGS OF FACT

The claimant was employed as a correctional officer for the state of Maryland, from approximately March 18, 1987 until August 20, 1988, when he was suspended pending discharge. That was still his employment status at the time of the hearing before the Board of Appeals.

The claimant was suspended pending discharge because of his actions during an incident that occurred on August 17, 1988. On the evening of the 17th, the claimant was observed by a state trooper to be driving his car in a very suspicious manner, weaving across the road. The trooper pulled the claimant over and upon questioning him and observing both the claimant's actions and the odor of his breath, concluded that he was under the influence of alcohol. The trooper observed a cigarette butt on the floor board of the car that turned out later to test positive for marijuana. The trooper also observed the claimant reach over and quickly take something out the sun visor of his car and swallow it. However, the trooper was unable to stop the claimant, and therefore could not identify what it was the claimant had swallowed.

The claimant took a breathalyzer test that night, and his test results showed him to be under the legal limit for intoxication or impaired, based solely on alcohol. However the test could not detect whether the claimant was under the influence of any drugs.

When the trooper brought the claimant down to the station, he continued to observe the claimant, who was acting quite erratically, one minute crying and the next minute acting like he didn't care. Various charges were placed against the claimant.

Subsequently, the claimant was found guilty and placed on unsupervised probation for driving his car under the influence of drugs and/or alcohol. He was fined \$500 and given a suspended 60-day sentence. He also had a "no alcohol" restriction of 36 months placed on his license. Criminal

charges of drug possession were placed on the stet docket and were not prosecuted at that time.

As a result of this incident, the claimant was placed on suspension pending discharge by his employer. The claimant is a correctional officer who comes in constant contact with inmates. Among his duties included searching the inmates for contraband articles such as marijuana and other drugs.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant was suspended pending discharge for gross misconduct, connected with his work, within the meaning of Section 6(b) of the law. The Board has held that a correctional officer is in a position of trust in which his own integrity and avoidance of criminal action is relevant to his daily work; therefore, an employment rule prohibiting use of drugs, even while off the premises and off work hours is a reasonable rule, and a breach of that rule constitutes gross misconduct connected with the work. Todd v. Threshold, Inc., 302-BH-85. See also, Weems v. Baltimore City Jail, 233-BH-85.

In this case, the claimant's off-duty behavior, involving the use of illegal drugs and alcohol while driving a motor vehicle, is connected with his work in accord with the Board's reasoning in the Todd case, and therefore a finding of gross misconduct is appropriate.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 14, 1988 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Date of Hearing: January 31, 1989

COPIES MAILED TO

CLAIMANT

EMPLOYER

Maryland Correctional

UNEMPLOYMENT INSURANCE - GLEN BURNIE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-6040

STATE OF MARYLAND
William Donald Schaefer
Governor

- DECISION -

Date: Mailed: November 7, 1988

Claimant: David E. Queen, Jr.

Appeal No.: 8811081

S.S. No.:

Employer: MD Correctional Pre-Release System.
c/o Dept. of Personnel

L.O.No.: 02

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 WITH THE APPEALS DIVISION, ROOM 518, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

November 22, 1988

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:

Claimant

FOR THE EMPLOYER:

Steven Lorenzet, Personnel
Officer

FINDINGS OF FACT

The claimant began working for the employer, an agency of the State of Maryland, as a full-time Correctional Officer on March 18, 1987. His last day of work was August 20, 1988, when he was suspended from duty pending charges.

The testimony reveals that the claimant was assigned to the Brockridge Correctional Facility in Jessup, Maryland. On August 17, 1988, Captain W. L. Williams, the shift supervisor of the claimant, received a telephone call from a First Lieutenant R. L. McWhorter, Maryland State Police. Captain Williams was informed that the claimant had been arrested at 3:48 AM, and that he had been charged with driving while intoxicated and possession of a controlled substance known as marijuana. The state police officer reported that a hand-rolled cigarette was on the floor of the claimant's car and other paraphernalia. The claimant's blood tested a show of alcohol content of .02. The claimant admitted having several beers while off-duty, but denied any possession of any controlled substances. The claimant was suspended from duty, effective August 20, 1988, but there has been no court hearing as of the date of this hearing as to the charges against the claimant.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law is not supported by any testimony or evidence before the Hearing Examiner. Based on the weight of the testimony and evidence, it is concluded that there has not been established any conduct on the part of the claimant that could be construed as gross misconduct or misconduct connected with the work within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. The claimant categorically denied possession of any controlled substance. There is no testimony by any police officer at this hearing. The claimant has not been tried in a court of law as to the charges as of the date of this hearing, and it is for this reason that the determination of the Claims Examiner must be reversed.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed upon the claimant based on his separation from his employment with the Maryland Correctional Pre-Release System. The claimant may contact his local office as to the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.


Gerald E. Askin
Hearing Examiner

Date of Hearing: November 2, 1988
Cassette: 7330
Specialist ID: 02417

Copies Mailed on November 7, 1988 to:
Claimant
Employer
Unemployment Insurance - Glen Burnie (MABS)
Maryland Correctional Pre-Release System