

- DECISION -

Claimant:
THOMAS E. ERVIN

Decision No.: 02238-BR-97

Date: July 3, 1997

Appeal No.: 9705633

Employer:
ANNE ARUNDEL CO PUBLIC SCHOOLS
COMPENSATION OFFICE

S.S. No.:

L.O. No.: 02

Appellant: Employer

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

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: August 2, 1997

REVIEW ON THE RECORD

The Board adopts the findings of fact of the hearing examiner but reaches a different conclusion of law.

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113).

When a claimant is merely charged but not convicted of a crime, this evidence, by itself, does not support a finding that the claimant was discharged for misconduct connected with the work. See Fitzgerald v. Marten's Motors, Inc., 904-BH-89 (where a claimant was discharged, but not for misconduct, for a loss of insurance bonding resulting from a mere charge of robbery and not a conviction).

In the instant case, at the time the claimant was discharged, it was for allegedly possessing controlled dangerous substances; the claimant was merely charged with such a crime and was not convicted. At the time the claimant was suspended, the employer had no independent evidence that the claimant had committed any misconduct which was connected with the work within the meaning of Sections 8-1002 or 8-1003 other than the fact that the claimant was charged with the crime of possession. The Board, therefore, finds that a conclusion that the claimant's actions constitute misconduct connected with the work as unsupported.

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 Anne Arundel County Public Schools Compensation Office.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

dt

Copies mailed to:

THOMAS E. ERVIN

ANNE ARUNDEL CO PUBLIC SCHOOLS

PETER O'NEILL, ESQUIRE

DONNA KLAUZA

JACK GOLDSTEIN

Local Office - #02