Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

—DECISION—

Decision No.: 224-BR-90

Date: March 8, 1990

Claimant: Carol L. Gray

Appeal No.: 8913808

S. S. No.:

Employer: Valley Animal Hospital, Inc.
ATTN : Bonnie Miller, Owner

L O. No.: 9

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 6(c) of the law; whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

—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 AT MIDNIGHT ON April 7, 1990

—APPEARANCES–

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Procedural Issues

In her appeal letter, the claimant argues that the Hearing Examiner did not raise the issue of whether the employer had good cause for failing to appear at the first hearing which

was scheduled in this case. This argument is without merit, as the Hearing Examiner did raise this issue and also took a reasonable amount of testimony on the issue.

This case was originally scheduled for a hearing before Hearing Examiner Finegan. The employer phoned in a request for a postponement, a request which was denied on November 24, 1989. The reasons for the request were that the employer objected to the case being held before Hearing Examiner Finegan and that the employer preferred to schedule her work so that Thursday was her day off, during which she could attend the hearing. The Board concludes that the denial of the postponement was proper and that there was not good cause for a postponement in this case. The desire for a different Hearing Examiner is an absolutely improper reason for requesting a postponement, and the employer's scheduling problem did not appear to be significant enough to require a postponement either.

Normally, the Board would rule that the employer did not have good cause for failing to appear at the hearing after the postponement was denied. In this case, however, the Board cannot so rule because of the additional testimony. The additional testimony was to the effect that the Appeals Division informed the employer that she could obtain an additional hearing by simply failing to appear at the scheduled hearing, and that the case would be reopened upon her petition for reopening. The Board credits the employer's testimony on this issue because the Board is aware that this is the Appeals Division's unwritten policy on this issue. Despite the fact that this policy is in violation of the postponement regulations at COMAR 24.02.06.02, the employer must still be granted a reopening, since she was promised a reopening.

The Board recognizes the unfairness of requiring the claimant in this case to attend a hearing which the Appeals Division had already agreed to later reopen. The claimant also submitted evidence, which the Board credits, which tends to show that the employer was well aware that the claimant would be attending a needless hearing before Hearing Examiner Finegan and was in fact quite amused by this prospect. This points up another problem in not following the appeal regulations, but it does not alter the fact that the employer should be allowed to reasonably rely upon the information provided by the Appeals Division that the case would be reopened. Therefore, the reopening of the case was appropriate.

It was entirely inappropriate, however, for the Appeals Division to give the appearance that it was acceding to the employer's request to change Hearing Examiners. If the case had to be reopened, it should have been reopened before the same Hearing Examiner. In the interest of ecomomy and of saving time and aggravation for all concerned, however, the Board will not remand this case for an additional hearing. The Board itself has carefully reviewed testimony in this case and will make its own decision based on that testimony.

The claimant also complained in her appeal letter that she was not allowed to finish her testimony, though the employer was allowed to go on at length. There is no merit in this contention. The claimant was allowed to testify twice. At the end of each statement, she was specifically asked by the Hearing Examiner if she had anything else to say, and she specifically said that she did not. Twice more, the Hearing Examiner asked both parties if they had anything else to say. Although there was no question but that this hearing was too long and was allowed to stray from the central issues, both parties had adequate opportunities to present their case.

It is apparent to the Board, not only from the testimony but also from the letters and documents in the appeal file, that both parties were wildly exaggerating the faults, demerits and peccadilloes of the other party. There is no question but that there was a strong personality dispute between the claimant and the employer, and it appears to the Board that neither had a clear or unbiased picture of the motivations of the other. The central core of facts about which this case revolves are not really contested. The interpretations given these facts by each party were widely different and, no doubt, distorted by the personality conflict between the two.

FINDINGS OF FACT

The claimant had been previously employed by this employer, a veterinary hospital, and had left in order to have a baby. She came back to employment and worked, as scheduled, approximately one day per week. After two days of actual work, she was discharged. At the same time, she was working at another establishment and also doing some work out of her home.

There was a strong personality conflict between the claimant and her employer, and each interpreted virtually every action of the other as misconduct, or as the result of evil or at least inappropriate intentions. The following actions, complained of by the employer, are found by the Board to be

either not the fault of the claimant at all or to have been trivial matters magnified by the personality conflict: bringing the claimant's infant into work for two hours one day during an emergency, mentioning to a friend of hers why the schedule had been changed, mentioning that she might quit and mentioning that the employer owed her money.

The claimant did commit one action which the Board considers to be misconduct. On one occasion, the claimant had in her care a cat which was terminally ill and about to be put to sleep. The claimant administered a certain medication to the cat. This medication was not the type normally authorized to be used at this facility. The claimant did not have specific permission to use this medication on this terminally ill animal, but the claimant did announce that she was going to use this medication and proceeded to do so when no objection was raised. The claimant's use of this medication was without specific authorization, but it was in line with her own beliefs derived from one school of veterinary medicine. Although she made some announcement that she was going to do so and proceeded when there was no objection, the claimant knew or should have known that this particular type of treatment was not normally authorized by this particular employer.

CONCLUSIONS OF LAW

The claimant committed misconduct when she presumed that the employer had acquiesced in the administration of a medication which she knew or should have known the employer did not normally approve. A violation of the normally authorized procedures requires an explicit authorization. The claimant's failure to get such authorization amounts to misconduct. Although this is a deliberate violation of an employer's rule, it does not show a gross indifference to the employer's interests. The claimant was following her own veterinary beliefs and was attempting to aid an animal which had been given up for dead. As such, her conduct does not show a "gross disregard" of the employer's interests as required by Section 6(b)(1) of the law, even though it was not proper conduct.

With regard to the other alleged violations, the employer has not met its burden of proof of showing that they amounted to "a series of repeated violations of employment rules." The claimant's conduct, thus, does not meet the requirements of Section 6(b)(2) of the law, either.
Misconduct not meeting the requirements of Section 6(b)(1) or (2) of the law is not gross misconduct. Accordingly, the claimant will be found to have been discharged, but for misconduct within the meaning of Section 6(c) of the law.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning September 17, 1989 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Harold A. Warnick
Associate Member

K:HW
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
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Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Date: Mailed: January 10, 1990

Claimant: Carol L. Gray

Appeal No.: 8913808

S. S. No.:

Employer: Valley Animal Hospital, Inc.

LO. No.: 9

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law. Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

— 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 APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON January 25, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Carol L. Gray - Claimant
David Niznik - Husband

FOR THE EMPLOYER:

Bonnie Miller - Owner

FINDINGS OF FACT

The claimant was denied benefits by determination of the Claims Examiner on the grounds t hat she was discharged, but for no misconduct connected with her work. The employer appealed and a hearing was scheduled for December 1, 1989. The employer failed to appear and the case was dismissed. The employer filed a timely

request for reopening and appeared and a hearing was held on January 4, 1990. The case was reopened for good cause shown and heard.

The claimant was employed by Valley Animal Hospital from March, 1989 until her actual last day of work, September 21, 1989. She is a doctor of veterinarian medicine and paid $125.00 a day. The claimant normally worked only one day a week, as she was off for maternity reasons and returned after the birth of her child.

The employer discharged the claimant for several things which evidenced friction between the employer and the claimant and the staff.

The employer learned that the claimant treated a cat with unauthorized medication, not acceptable in normal medical practice. She was not given permission, either by the owner or the owner of the animal for this treatment. On another occasion, the claimant argued and demanded money in front of staff and clients. This was an unprofessional and embarrassing scene.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) 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 in prescribing unauthorized medical treatment for animals and her creating a scene concerning her salary in front of staff and clients was a deliberate and willful disregard of standards of behavior which the employer has a right to expect and must be considered a discharge for gross misconduct connected with the work. The determination of the Claims Examiner will be reversed.

DECISION

The claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning September 17, 1989 and until she becomes re-employed, earns at least ten times her weekly benefit amount ($2,050) and thereafter becomes unemployed through no fault of her own.

8913808

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.
Hearing Examiner

Date of hearing: 1/4/90
amp/Specialist ID: 09653
Cassette No. 11395
Copies mailed on January 10, 1990 to:

Claimant
Employer
Unemployment insurance - Towson (MABS)