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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor

EUGENE A. CONTI, JR., Secretary

Board of Appeals

Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

SYLVESTER A. INGRAM

Decision No.: 02290-BR-96

Date: July 19, 1996

Appeal No.: 9606351

S.S. No.:

Employer:

LAUREL FITNESS & SWIM CLB INC

L.O. No.: 23

Appellant: Claimant

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 18, 1996

REVIEW ON THE RECORD

The Board adopts the following findings of fact and reverses the decision of the hearing examiner.



The claimant was employed as a full-time aquatics director from February 3, 1993, through January 24, 1996. He is unemployed as the result of a discharge.

The claimant was discharged from employment by the owner of the company because of complaints of alleged sexually harassing conduct. The claimant (the only witness at the hearing with first hand knowledge of the alleged events) denies all accusations.

The claimant requested of the owner to speak with the alleged victims before he made his final decision to discharge the claimant but was refused. The claimant stated to the owner that he did nothing wrong. Nevertheless, the owner discharged the claimant for sexually harassing co-workers in the workplace.

The Board considers allegations of sexual harassment in the workplace to be extremely serious in nature. While the Board is aware that the recipient of the alleged harassment may be placed in an uncomfortable or even threatening situation, the Board is equally aware that the alleged harasser's reputation and career may be placed in jeopardy. For the Board to make or adopt a finding that the claimant was engaged in the activity of sexual harassment causing a hostile work environment rising to the level of misconduct, gross misconduct, or aggravated misconduct as defined by the Maryland Unemployment Insurance Law, there must be substantial evidence to support such conclusions of law.

The Board notes that none of the witnesses or any "victim" of sexual harassment with first hand knowledge as to the claimant's actions were present at the hearing to present any sworn testimony. The Board notes that the employer's witness testified and submitted evidence which was substantially hearsay. The Board finds the employer's witness' testimony insufficient to support a finding of improper actions by the claimant.

The decision of the hearing examiner will be reversed.

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 Laurel Fitness & Swim Club Inc.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

UNEMPLOYMENT INSURANCE APPEALS DECISION

SYLVESTER A. INGRAM

Before the:

SSN #

Claimant

vs.

LAUREL FITNESS & SWIM CLB INC

Employer/Agency

**Maryland Department of Labor,
Licensing and Regulation**

Appeals Division

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 9606351

Appellant: Employer

Local Office: 23 / Columbia

May 9, 1996

For the Claimant: PRESENT

For the Employer: PRESENT, SUSAN SELCKMAN, JULIE T. SWEENEY, ESQUIRE

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated Labor and Employment Article, Title 8, Sections 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

FINDINGS OF FACT

The claimant worked as a full-time aquatics director at a rate of \$730.00 bi-weekly plus commission from February 3, 1993 through January 24, 1996 for Laurel Fitness & Swim Club, Inc.

The employer discharged the claimant because of an investigation regarding allegations of sexual harassment by two employees and club members against the claimant. The witness at the appeal hearing, Susan Selckman, heard and interviewed the complaint of two female employees indicating that the claimant touched their legs, turned out lights and grabbed them. The witnesses stated that the claimant inappropriate and unprofessional comments such as, "You wear too many clothes, take off the baggy clothes so that I can see your body."

During one incident, the claimant slid his hand up club another female employee's leg. Contained in the claimant's personnel file was a complaint from a member alleging that the claimant sexually touched her. The employer has a policy strictly prohibiting involvement between employees that work within the facility and between employees and members of the club. The policy further indicates that sexual harassment in the form of touching will not be tolerated and grounds for immediate discharge. During the fall of 1994, the owner counseled the claimant when the owner witnessed the claimant kissing a member of the club while in the pool area. Neither the claimant nor the employer offer any other reasons for the claimant's discharge.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(i) (Supp. 1994) provides that an individual shall be disqualified from receiving benefits where he or she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards that an employer has a right to expect and shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(ii) (Supp. 1994) provides that an individual shall be disqualified from receiving benefits where discharged from employment because of a series of violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

EVALUATION OF EVIDENCE

The claimant disregarded the employer's policy against sexual harassment when he made inappropriate comments to female employees and touched them in places of their body without these employee's consent. The claimant had a history of inappropriate behavior with club members as well. In the face of warnings and the claimant's knowledge that his behavior was inappropriate to the work place, the claimant continued to fondle female employees and make inappropriate provocative comments. This Hearing Examiner finds that the claimant's disregard of the policy and the employer's reasonable expectations that he act in a proper and respectful manner to both members of the club and employees constitutes gross misconduct.

DECISION

IT IS HELD THAT the claimant was discharged for gross misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1002(a)(1)(ii) (Supp. 1994). A disqualification is imposed for the week beginning January 21, 1996 and extending until the claimant becomes re-employed and has earned wages in covered employment that equal at least 20 times the claimant's weekly benefit amount.

The determination of the claims examiner is reversed.


P. Fedor, ESQ
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by May 24, 1996.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: April 29, 1996
DW/Specialist ID: 23381
Seq. No.: 001
Copies mailed on May 9, 1996 to:

SYLVESTER A. INGRAM
LAUREL FITNESS & SWIM CLB INC
LOCAL OFFICE #23

kjk

Copies mailed to:

SYLVESTER A. INGRAM

LAUREL FITNESS & SWIM CLB INC

MARY E. RYAN, ESQUIRE

JULIE T. SWEENEY

JULIE T. SWEENEY

Local Office - #23