



**DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032

— DECISION —

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO: 232-BH-83

DATE: February 24, 1983

APPEAL NO: 09629

S. S. NO:

CLAIMANT: Kenneth M. Winchester

EMPLOYER: Joseph J. Hock Co.

LO NO: 1

APPELLANT: CLAIMANT

Attn: W. Eugene Higgins
Executive Vice President

ISSUE

Whether the Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; and whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §6(b) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

March 26, 1983

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Kenneth M. Winchester - Claimant

EVIDENCE CONSIDERED

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 Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed as a truck driver by Joseph J. Hock Company on September 10, 1978.

On June 22, 1982, at or near a construction site, an argument developed between the Claimant and his road foreman when the Claimant's request for a lunch break was refused. During the course of this argument, the Claimant was called a "nigger". There was a sudden escalation of the argument when the Claimant turned around and saw the foreman driving a company truck toward him. The foreman stopped the truck in close proximity to where the Claimant was standing, alighted from the vehicle, and came toward the Claimant with his hands out. The foreman appeared to be angry. Believing that a battery was imminent, the Claimant grabbed the foreman and administered a blow to his person. Words were exchanged and the police were called to the scene.

Shortly thereafter, the Claimant was discharged for assaulting the foreman.

CONCLUSIONS OF LAW

An individual may use non-deadly force in self-defense anytime he reasonably believes that unlawful force is about to be used against him. This is true even where one is defending against an attack by his superiors on the job. In view of the facts as they appeared at the time the Claimant acted, we conclude, that the Claimant's use of force was reasonable, justified, and constituted self-defense as a matter of law.

Under the circumstances, we conclude, that the use of reasonable force in self-defense by the Claimant against his foreman did not constitute "misconduct connected with the work" within the meaning of §6(b) or §6(c) of the law. The Claimant is entitled to benefits.

DECISION

The Claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of §(6)(b) or §(6)(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with Joseph J. Hock Company. The Claimant may contact his local office concerning the other eligibility requirements of the Law.

The decision of the Appeals Referee is reversed.

Maurice E. Hill

Associate Member

Ray A. Wornick

Associate Member

Thomas W. Keech

Chairman

D:W:K

gm

(WRM)

DATE OF HEARING: January 4, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

THOMAS W. KEACH
 Chairman

HAZEL A. WARNICK
 MAURICE E. DILL
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

- DECISION -

APPELLANT: Kenneth M. Winchester

DATE: August 19, 1982

APPEAL NO.: 09629

S. S. NO.:

EMPLOYER: Joseph J. Hock Company

L. O. NO.: 1

APPELLANT: Claimant

ISSUE: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON September 3, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Kenneth M. Winchester - Claimant

W. Eugene Higgins -
 Executive Vice-President

FINDINGS OF FACT

The claimant has a benefit year effective January 13, 1982. His weekly benefit amount is \$120.00. The claimant was employed by Joseph J. Hock Company of Baltimore, Maryland on September 10, 1978. He was performing duties as a truck driver at \$9.85 per hour, at the time of his separation on June 22, 1982. The claimant has remained unemployed from June 22, 1982 to the present.

The testimony reveals that the claimant was discharged from his employment for assaulting his supervisor.

The testimony reveals that on June 22, 1982 at approximately 11:00 a.m., the claimant asked his foreman about lunch. The foreman indicated that they were not taking lunch at that time and would work a little longer. The claimant responded that he had a right to a lunch break and an argument ensued. The claimant and his supervisor separated but later the supervisor came up to the claimant in his truck and stopped the truck next to the claimant. While the supervisor was walking toward the claimant, the claimant struck him.

The foreman did not make any physical gesture toward the claimant that would indicate that he was going to hit the claimant but the claimant felt that the foreman looked angry and, therefore, struck him.

CONCLUSIONS OF LAW

It is concluded from the testimony that the claimant deliberately struck his foreman. This is a deliberate and wanton act against the employer's standard of behavior and the determination of the Claims Examiner will be affirmed.

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 for the week beginning June 20, 1982 and until such time as he becomes reemployed and earns at least ten times his weekly benefit amount (\$1200) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner under Section 6(b) of the Law, is affirmed.

DATE OF HEARING: August 5, 1982

ras

(3977 --- Chandler)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Baltimore