



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND

HARRY HUGHES
Governor

(301) 383-5032

— DECISION —

Decision No.: 25 -BH-87

Date: January 16, 1987

Claimant: Roy E. Everett

Appeal No.: 13090

S. S. No.:

Employer: Dept. 05 Health & Human Services
ATTN: Personnel
Payroll Division

Case No.: 1

Appellant: CLAIMANT
REMAND FROM
COURT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the 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 MAYBE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON February 15 , 1987

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Roy E. Everett - Claimant
Frank Cahn - Attorney
Irene Morin - Witness
Frank Santoro - Witness

Not Represented

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at all of the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment and Training's documents in the appeal file.

This case was remanded to the Board of Appeals by the Circuit Court for Baltimore City. In accord with that remand order an additional hearing was held on December 2, 1986 at which time the claimant was present and presented additional evidence. The employer was not present at that hearing.

The Board further notes that although the primary reason this case was remanded to the Board was because of the claimant's alleged inability to read, that inability is not a significant factor in this case.

FINDINGS OF FACT

The claimant was employed by the Social Security Administration, Division of the United States Department of Health and Human Services, as a mail clerk from January 14, 1980 until he was discharged on or about September 23, 1984. He was hired as an emotionally handicapped person.

The claimant was discharged because on or about June 29, 1984 there was an incident at work during which time the claimant became extremely upset, used inappropriate language and threatened to kill his supervisor. This incident, however, was the culmination of a series of incidents that had occurred at the work place between the claimant and fellow workers which had contributed to making the claimant extremely agitated and upset and exacerbated his emotional problems. During one of these incidents at work, the claimant felt he was being attacked by other workers and that they were threatening to lynch him.

On or about July 3, 1984, the claimant began psychiatric therapy on a regular basis. At that time he was diagnosed as being severely depressed and not in full control of his emotions. Mr. Everett was in this emotional and mental state at the time that he threatened his supervisor.

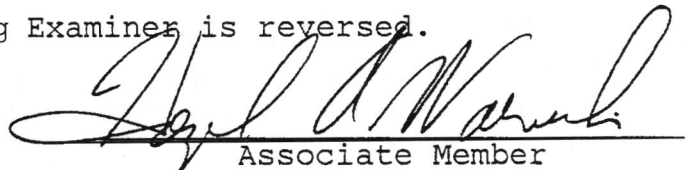
CONCLUSIONS OF LAW

The claimant's action in threatening his supervisor was clearly an act of misconduct, within the meaning of Section 6(c) of the law. However, due to his mental and emotional state at that time this incident occurred, the Board concludes that his actions do not rise to the level of gross misconduct within the meaning of Section 6(b) of the law: While there is substantial evidence furnished by the claimant to show that he was in a depressed state of mind and not completely in control of his emotions at the time that he made the threats, the Board does not conclude that his emotional state totally excuses his actions. However, it does mitigate the degree of his misconduct and does show that his actions were not so deliberate and willful as to constitute gross misconduct.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 23, 1984 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K
kmb

DATE OF HEARING: December 2, 1986

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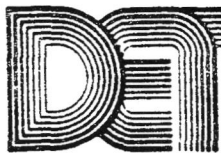
CLAIMANT

Social Security Administration
ATTN: Jane Martin

EMPLOYER

Frank Cahn, Esquire
Suite 202, Plaza Office Center

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032
DECISION

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

DATE: May 6, 1985

DECISION NO.: 213-DR-85

CLAIMANT: ROY E. Everett

APPEAL NO.: 13090

S. S. NO.:

EMPLOYER: Dept. of Health & Human
Services
Payroll Division

L. O. NO.: 1

APPELLANT: CLAIMANT

After receipt of your Petition for a Review of the decision of the Appeals Referee, the Board of Appeals has considered all of the facts and records in your case.

The Board of Appeals has concluded that the decision of the Appeals Referee is in conformity with the Maryland Unemployment Insurance Law and, accordingly, your Petition for Review is denied.

YOU may file an appeal on or before the date below stated. The appeal be taken in person or through an attorney to the Circuit Court of Baltimore City, if you reside in Baltimore City, or to the Circuit Court of the County in Maryland in which you reside.

The period for filing an appeal to court expires at midnight, June 5, 1985.

Thomas W. Keech

Chairman

Hazel A. Warnick

Associate Member

K:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND

HARRY HUGHES
Governor

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date Mailed: Jan. 24, 1985

Claimant: Roy E. Everett

Appeal No.: 13090

1218

S. S. No.:

L.O. No.: 1

Employer: Department of Health
and Human Services
Payroll Division

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 ON, 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 February 8, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Roy E. Everett - Present

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

The claimant filed a claim for benefits effective October 14, 1984. His weekly benefit amount was determined to be \$137.00.

Social Security Administration

UNEMPLOYMENT INSURANCE - BALTIMORE

APPEALS REFEREE'S DECISION FILE

The claimant was employed by the Department of Health and Human Services, Social Security Administration, from January 14, 1980 until September 23, 1984. He was a mail clerk earning \$5.86 hourly.

The claimant was terminated by the Federal employer because on June 29, 1984 he used inappropriate, rude and offensive language at the work site and threatened to kill his branch chief.

EVALUATION OF EVIDENCE

The claimant, when confronted with this statement, replied that he didn't remember the incident.

The claimant contended that he had a learning disability and, in effect, had trouble reading. He was given over one hour to review the Government's evidence and contended that he could not read it. He was classified as a mail clerk and functioned in this on his job.

In addition; the claimant presented a medical statement from a psychiatrist at North Baltimore Center, Inc., dated August 20, 1984. This report of two pages indicated the claimant had some resentments on the job, but did not indicate that he didn't know what he was doing. It did mention that he had a resentment problem.

In reviewing these circumstances, it must be concluded that the evidence submitted by the Federal employer will be acceptable.


CONCLUSIONS OF LAW

It is found that the claimant was discharged by the Federal employer for the use of inappropriate, rude and offensive language at the work site and threatening to kill his branch chief. This is found to be a discharge for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, as it is a deliberate and willful disregard of standards of behavior which the employer has the right to expect, showing gross indifference to the employer's interest. The determination of the Claims Examiner will be affirmed.

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. He is disqualified from receiving benefits from the week beginning September 23, 1984 and until he becomes re-employed and earns at least ten times his weekly benefit amount (\$1,370.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.



John F. Kennedy, Jr.
Appeals Referee

esp/Lehman
(#8826)

DATE OF HEARING: December 10, 1984

COPIES MAILED ON January 24, 1985 to:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

Social Security Administration
L-1114 West Low Rise Building
6400 Security Boulevard
Baltimore, Maryland 21235