

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 26 -BH-88
Date: Jan. 12, 1988
Appeal No.: 8704530
S. S. No.:
Employer: Turnbull Enterprises, Inc.
ATTN: Patricia Corbin
Office Manager
L.O. No.: 1
Appellant: EMPLOYER
Claimant: Christopher Thomas

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

February 11, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Jerome Fuller,
Production Mgr.

EVALUATION OF EVIDENCE

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 Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed for the employer, Turnbull Enterprises, from January 20, 1981 through February 9, 1987. His last actual day of work was Saturday, February 7, 1987. He worked in assembly, making \$5.42 an hour.

On the Saturday in question, the claimant was working along with other employees on overtime, scheduled to leave at 12 noon. He and another man were given an assignment to drive the company truck to the dump and to return the truck to the premises. A normal amount of time to accomplish this would have been two hours.

The driver of the truck had paid out some of his own money in order to pay the dumping fees for the truck. He decided that he was going to get reimbursed immediately by the foreman. The claimant and the driver took the truck to the claimant's house, where they both began to drink. This took place after 2:00 p.m. Twice that afternoon, the claimant and the driver drove the truck from the claimant's house to the foreman's house, attempting to reach the foreman and make the driver's claim for reimbursement. Each time, they returned to the claimant's house. They continued to drink until the driver was intoxicated. They left the claimant's house again in the company truck. This time, the driver had an accident with another car and left the scene of the accident. A few minutes later, the driver then hit three parked cars on another street and left the scene of those accidents also. The driver and the claimant then drove the truck to another location and sat there in it for a considerable amount of time, for the purpose of avoiding detection for the hit-and-run accidents. They then drove the truck to the company premises, but the police had been given the truck's license number by the driver of the first car hit, and the police were waiting for the truck on the company premises.

Both the claimant and the driver were fired.

CONCLUSIONS OF LAW

In making the above findings of fact, the Board notes that the claimant's stated reasons for being in the truck so late in the day were not supported by the facts. He stated that he was at his father's house and was in the truck that evening only because he had asked the driver for a ride to the bus stop. Great doubt is cast upon this version of events by the fact that the claimant remained with the truck throughout all four accidents, remained with the truck during the lengthy period of time during which he and the driver were trying to avoid detection from the accidents, and was still with the truck when it was driven back to the employer's premises at 7:00 p.m.

In addition, the claimant's actions did not appear to be the actions of a person who was simply trying to get home. In fact, it appears that the claimant was home, as his "father's house" is at the same address which is the claimant's address of record in this case. Even by his own version of events, he was taking a bus to another location (his girlfriend's house) when he asked for a ride in the truck. This avowed intention of taking a bus somewhere else, however, was belied by the fact that the claimant never did leave the truck until it was impounded by the police on the employer's premises at 7:00 p.m.

The claimant's only real argument in defense is that he was not actually driving the truck. While this is a true fact, it does not end the consideration of the matter. The claimant supplied the place at which the driver became intoxicated, and in fact drank with him and accompanied him throughout the afternoon and the evening. He knew the driver was intoxicated but continued to accompany him in the truck on at least three occasions after he had already been returned home from the actual job assignment. He stayed with the driver throughout the first hit-and-run accident and the series of three subsequent accidents and remained with the driver and the truck during the following period, when the driver was attempting to hide. He himself was under the influence of alcohol while in the company truck. Although this last factor occurred after working hours, it occurred at a time when the claimant was voluntarily in the company truck, after he had already been returned home from the work site.

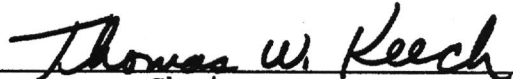
The claimant's actions in this case show a deliberate and willful disregard of standards of behavior which his employer had a right to expect, showing a gross indifference to the employer's interests. The claimant drank with the driver over a long period of time, knowing that the driver was subsequently going to drive the company truck. By supplying the


place to drink and accompanying the driver, he encouraged the driver's gross violation of the employer's rules. After the driver had had four small hit-and-run accidents in the truck, the claimant participated in the driver's attempt to conceal this fact. The claimant was a participant in the gross indiscretions performed by the driver, and his conduct does meet the standard of gross misconduct within the meaning of Section 6(b) of the law.

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 from the week beginning February 8, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,160), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Chairman

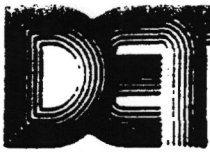

Associate Member

K:W
kbm

Date of Hearing: January 5, 1988

COPIES MAILED TO:

CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
William Donald Schaefer

(301) 383-5040

Remand
DECISION

Claimant: Christopher W. Thomas
Date: Mailed: 10-27-87
Appeal No.: 8704530
S. S. No.:
Employer: Turnbull Enterprises, Inc.
L.O. No.: 1
Appellant: Claimant

Issue:

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

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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON November 12, 1987
NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Christopher W. Thomas - Claimant

Jerome H. Fuller-
Production Manager

This case is being re-heard pursuant to a Remand Order dated October 2, 1987. This case was remanded for a full hearing and decision on the merits of the case because the previous notices in this case were sent to the wrong address for the claimant, even after he notified DEED of his correct address. This case was previously scheduled for June 3, 1987 and July 28, 1987. The claimant received notice after the hearing date.

FINDINGS OF FACT

From January 1, 1981 to February 2, 1987, the claimant worked as an assembler earning \$5.42 per hour. On Saturday in February of 1987, he and AND some other employees volunteered to come in and haul

refuse to the dump. He was to start work at the regular time and get off at 2 p.m.

About 7 p.m., the employer received a call from the police asking him to come and claim his truck. When he arrived, he learned from the police that the claimant and the driver of the truck had been arrested after hitting three cars and leaving the scene of the accident. The driver was given a test for intoxication, and it was determined that he had been drinking.

Both were discharged. The driver was discharged for drinking on the job, leaving the scene of three accidents, and misuse of the employer's vehicle. The claimant was discharged for riding along with him.

CONCLUSIONS OF LAW

COMAR 24.02.06.02N:

The claimant did not appear for a previous hearing because he received the notice after the hearing date had passed. The notice was sent to the correct address, but with the wrong zip code. Under COMAR 24.02.06.02N, this constitutes good cause to reopen this dismissed case.

Section 6(b) - Section 6(c):

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. Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113 (1974).

Under Section 6(b), the term "gross misconduct," refers to conduct of an employee which is (1) "a deliberate and willful disregard of standards of behavior which his employer has a right to expect, showing a gross indifference to the employer's interests, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations."

While the conduct of the claimant, in this case, may not have been appropriate, it does not constitute misconduct within the

meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law.

DECISION

COMAR 24.02.06.02N(2)(a)(i):

There is good cause to reopen this dismissed case.

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from the employment with Turnbull Enterprises, Inc.

The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.


Van D. Caldwell
Hearing Examiner

Date of hearing: 10/20/87
amp/Groves/6312

Copies mailed on October 27, 1987 to:

Claimant
Employer
Unemployment insurance - Baltimore (MABS)

Board of Appeals