

- DECISION -

Claimant:

HENRY M. YEAGER

Employer:

TRUSTEES-SHEPPARD PRATT HOSP

Decision No.: 02782-BR-96

Date: August 19, 1996

Appeal No.: 9611669

S.S. No.:

L.O. No.: 09

Appellant: Claimant

Issue: Whether the claimant was discharged for aggravated misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1002.1.

- 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: September 18, 1996

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but reaches a different conclusion of law.




The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002.1 defines "Aggravated Misconduct" as intentional conduct by an employee in the workplace that results in a physical assault upon or bodily injury to or property loss or damage to the property of the employer, fellow employees, sub-contractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's product or services.

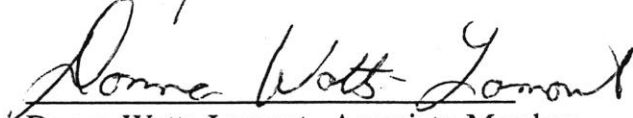
When the claimant "without provocation... slapped the co-employee on both sides of his face" and pushed a co-employee into a trash can his actions constituted aggravated misconduct.

DECISION

The claimant was discharged for aggravated misconduct, connected with the work, within the meaning of §8-1002.1 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning April 28, 1996 and until the claimant earns thirty times his weekly benefit amount and thereafter becomes re-employed.

The decision of the Hearing Examiner is reversed.


Clayton A. Mitchell, Sr., Associate Member


Donna Watts-Lamont, Associate Member

kjk
Copies mailed to:
HENRY M. YEAGER
TRUSTEES-SHEPPARD PRATT HOSP
TRUSTEES-SHEPPARD PRATT HOSP
Local Office - #09

UNEMPLOYMENT INSURANCE APPEALS DECISION

HENRY M. YEAGER

TOWSON, MD 21204-

SSN :

Claimant

vs.

TRUSTEES-SHEPPARD PRATT HOSP

Employer/Agency

Before the:

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

Appeals Division

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 9611669

Appellant: Employer

Local Office: 09 / Towson

June 25, 1996

For the Claimant: PRESENT, JIM BARRELL

For the Employer: PRESENT, TOM HESS, MARY COLIANO

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 was employed as a food service work from June 29, 1996 and the last day he worked was May 2, 1996. At the time of separation, the claimant was working full time and was earning \$8.45 per hour.

On April 20, 1996, while at the work place, the claimant overheard a co-employee refer to the claimant as a "pervert." The claimant began screaming and yelling at the co-employee who made the comment. Without provocation, the claimant then slapped the co-employee on both sides of his face. A third party tried to calm the claimant and the co-employee down, at which point, the claimant told this person to, "butt out." The claimant then pushed the co-employee into a trash can.

At the time of this incident, the claimant had already been offered the employer's early retirement program. The consideration period had not expired at the time of this incident. As a result of this incident, the claimant elected to take advantage of the employer's early retirement program. Had the claimant not so elected, the employer would have discharged the claimant.

In February, 1994, the claimant was issued a written warning as a result of his "tweaking" the ear of a co-employee. The claimant was "playing around," however, the person's whose ear was tweaked did not appreciate what the claimant did and so advised the claimant. The claimant responded by cursing at the co-employee and threatening to kick him in his, "butt."

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).

EVALUATION OF EVIDENCE

A resignation submitted by an employer in lieu of discharge is treated as a discharge. In this case, the employer has made it clear that had the claimant not elected the early retirement program, he would have been discharged as a result of his conduct. Therefore, this case will be treated as a discharge case. In the case of a discharge, the employer has the burden of proving, by a preponderance of the evidence, that the discharge was for actions which constitute some degree of misconduct in connection with the work. The employer has presented evidence, largely uncontradicted by the claimant, that the claimant, on April 20, 1996 assaulted a co-employee who had allegedly referred to the claimant "pervert." While it may be understandable for one to be upset under the circumstances, the claimant's reaction was clearly out of proportion to the situation. The claimant had been warned previously with regard to similar conduct. The claimant's conduct constitutes gross misconduct within the meaning of the Maryland Unemployment Insurance Law.

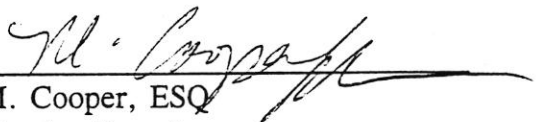
While it is true that the claimant presented evidence that he was "of borderline to dull normal intelligence," this in and of itself does not justify, explain, or mitigate the claimant's conduct. It is apparent that the claimant worked at the work place for a period of almost thirty years and in addition, went approximately two years without any inappropriate behavior vis-a-vis his co-employees. Therefore, it must be assumed, that notwithstanding the claimant's mental status, he certainly had the ability to act appropriately.

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)(i) (Supp. 1994). A

disqualification is imposed for the week beginning April 28, 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.


M. Cooper, 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 July 10, 1996.

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

Date of hearing: June 20, 1996

DW/Specialist ID: 09650

Seq. No.: 001

Copies mailed on June 25, 1996 to:

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LOCAL OFFICE #09