

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 347-BH-89
May 2, 1989
Claimant: Gregory Scruqqs
Appeal No.: 8808952
S. S. No.:
Employer: Division of Correction, Md.
L. O. No.: 1
Appellant: EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

June 1, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Present at December 13, 1988 hearing:
Bill Wharton, Union Rep.

FOR THE EMPLOYER:

Mike Gallagher, U.I.
Chief
Major Nancy Grimes
Salvador Marner,
Chief of Security
Dorothy Ransom, U.I.
Assistant Chief

Present for January 17, 1989 hearing:
Archer Blackwell, Union Rep.

Salvador Marner
Mike Gallagher
Mitchell Franks,
Personnel Officer

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.

The issue in this case is whether the claimant was discharged for gross misconduct connected with his work, within the meaning of Section 6(b) of the law. In a case of this nature, the burden of proof falls upon the employer. The employer's witnesses, Salvador Marner, Security Chief for the Maryland Correctional Institution for Women, and Mitchell J. Franks, Personnel Officer with the Division of Correction, had no personal knowledge of the allegations that led to the claimant's separation from employment with the Maryland Division of Correction. Both witnesses have gained their knowledge of this incident from investigations done by other parties and reported to them. The claimant was not present at the hearing before the Board of Appeals, but he was present at the lower appeals hearing and testified at that time.

FINDINGS OF FACT

The claimant was employed as a correctional officer by the Maryland Division of Correction from April 17, 1984 until 1 November 17, 1987. The claimant was assigned to the Maryland Correctional Institution for Women.

Complaints were received from three female inmates of the institution alleging that the claimant had had sexual relations with each of them. These encounters were alleged to have occurred at various times and in various cottages.

As a result of these allegations, an investigation was conducted by the Division of Correction. The investigation showed that the claimant's shifts and location assignments matched with the testimony of the three inmates.

Mr. Salvador testified that the three inmates knew each other but that they did not have a friendship and that they lived in separate cottages. Mr. Franks testified that the three inmates were friends.

CONCLUSIONS OF LAW

The burden is on the employer in a gross misconduct case to show that the claimant's actions were deliberate and willful. In this case, the evidence presented is insufficient to show that the claimant's action constitutes gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Hartman v. Polystyrene Products Company, Inc. , 164-BH-83.

The employer's case rests on the statements of three inmates. These inmates did not testify either at the hearing before the Board or at the hearing before the Hearing Examiner. There are no statements from these inmates entered into the record of either hearing. The claimant, who did testify at the hearing before the Hearing Examiner, denied having had sexual relationships with these inmates. Based on the evidence presented, the Board of Appeals finds that there is insufficient evidence to sustain a finding of gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

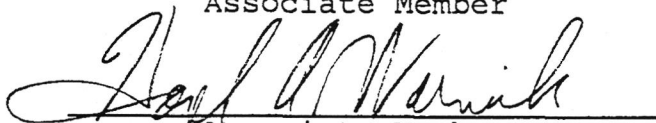
DECISION

The claimant was discharged, but not for gross misconduct connected with his work within the meaning of Section 6(b) of the law. No disqualification will be imposed based on his separation from his employment with the Division of Corrections, Maryland Jessup Institute.

The decision of the Hearing Examiner is affirmed.



Associate Member



Associate Member



Chairman

DW:W:K

kbm

COPIES MAILED TO:
CLAIMANT

EMPLOYER

Archer Blackwell, Assoc. Dir.

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-6048

STATE OF MARYLAND
William Donald Schaefer
Governor

- DECISION -

Date: Mailed: September 19, 1988
Claimant: Gregory A. Scruggs Appeal No.: 8808952
S.S. No.:
Employer: Div. of Correction MD L.O. No.: 01
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.

- 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 COURT OR WITH THE APPEALS DIVISION, ROOM 318, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON October 4, 1988

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- A P P E A R A N C E -

FOR THE CLAIMANT:

Claimant
Archer Blackwell
AFSCME, Council 92

FOR THE EMPLOYER:

Major Grimes
Dorothy L. Ransom, N.P.
Dept. of Personnel

FINDINGS OF FACT

The claimant has a benefit year effective August 22, 1988. His weekly benefit amount is \$195. The claimant was employed with the Division of Correction, Maryland Jessup Institute, on April 16, 1984. He was performing duties of a correctional officer at a salary of \$23,292 a year upon his separation on November 17, 1987.


CONCLUSIONS OF LAW

It is concluded from the only evidence presented at the appeals hearing that the claimant's behavior does not demonstrate a deliberate and willful disregard of standards, which the employer has a right to expect, as to amount to any gross misconduct or misconduct within the meaning of Section 6(b) or (c) of the Law. Without the use of the polygraph test, the employer's investigation proves very little direct evidence that the claimant did commit any misconduct in the line of duty. It should also be mentioned that it was brought out that the claimant was kept on after the accusations were made and while the investigation was proceeding. In all fairness to the evidence, the employer stated he was changed to a different post where he had no contact with inmates. However, this does not allow sufficient information to render any penalty. The decision of the Claims Examiner shall be reversed.

DECISION

The claimant was discharged, but not for gross misconduct connected with his work within the meaning of Section 6(b) of the Law. No disqualification will be imposed based on his separation from his employment with the Division of Correction, Maryland Jessup Institute.

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


James E. Rambo
Hearing Examiner

Date of Hearing: September 1, 1988

Cassette: 5244-B and 5245-A

Specialist ID: 01035

Copies Mailed on September 19, 1988 to:

Claimant

Employer

Unemployment Insurance - Baltimore (MMS)

Archer Blackwell

Associate Director

AFSCME, Council 92

11 E. Mt. Royal Avenue

Baltimore, MD 21202