



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032*

*Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	372-BR-90	
	Date:	April 12, 1990	
Claimant:	Ashok Law	Appeal No.:	9000895
		S. S. No.:	
Employer:	Sporting Angler, Inc. ATTN: Thomas Sotiros, Pres.	L.O. No.:	43
		Appellant:	EMPLOYER
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 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, IF YOU RESIDE IN 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 **May 12, 1990**

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

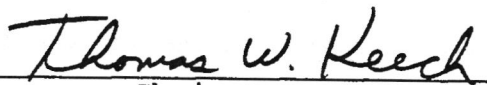
The Board adopts the findings of fact of the Hearing Examiner. One finding of fact made by the Hearing Examiner, however, will be amplified by the Board. The Hearing Examiner found that the claimant "contacted" a distributor, Orvis, to see about becoming an Orvis distributor himself. The Board adopts this finding. The Board finds in addition, that the claimant knew that the employer was an exclusive distributor of Orvis products before he made the call, and also that the claimant's intent in making this call was to sound out the possibility of persuading Orvis to break its exclusive distributorship arrangement with the employer.

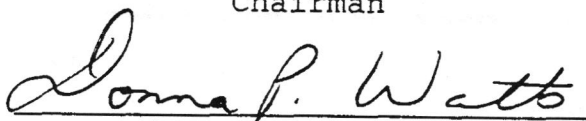
This action in itself was a breach of his duty of loyalty to the employer. The claimant was clearly attempting to compete with the employer and become a competing Orvis dealer within the area. The prohibition against competing with one's employer is not limited to competition for the employer's customers. Competition for a valuable exclusive distributorship held by the employer is also a serious breach of the duty of loyalty owed by an employee to an employer. It constitutes a deliberate disregard of standards of behavior which the employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct, connected with the work, within the meaning of Section 6(b) of the law. The penalty imposed by the Hearing Examiner, on the basis of her finding that this conduct constituted only misconduct, must be increased.

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 December 24, 1989 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:D
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor

J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner

Louis Wm. Steinwedel, Deputy Hearing Examiner

*1100 North Eutaw Street
Baltimore, Maryland 21201*

Telephone: 333-5040

— DECISION —

Claimant:	Ashok Law	Date:	Mailed: 2/13/90
		Appeal No.:	9000895
		S.S. No.:	
Employer:	Sporting Angler, Inc.	L.O. No.:	43
		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 OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 2/28/90

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR TO EMPLOYER:

Thomas Sotiros,
President

FINDINGS OF FACT

The claimant was employed by the Sporting Angler Shop on May 5, 1986. At the time of his separation from the employment on December 28, 1989, he earned \$300 weekly as a Salesman.

While still employed by the employer, the claimant decided to

open the same type of store as the employer. The store would have been located in Gaithersburg, Maryland, approximately 4.25 miles from the employer's place of business.

The claimant, while still employed by the employer, solicited accounts from suppliers for which the employer was the exclusive dealer. The claimant obtained the names of these suppliers through his employment with the employer. These contacts were made on the claimant's own time and off of the employer's premises.

More specifically, the claimant contacted the Orvis Company to see about getting an Orvis Dealership. Orvis declined, telling the claimant that he could not get an Orvis Dealership in Maryland because the employer was the exclusive Orvis distributor. The claimant was aware of the contract between Orvis and his employer when he contacted Orvis.

The claimant also asked customers of the employer's store about raising capital to open his new store. However, the claimant did not solicit the employer's customers, nor did he approach the customers that he asked about capital contributions on the employer's premises, or on the employer's time.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides that an individual shall be disqualified from benefits where he is discharged from the employment because behavior which demonstrates a willful disregard of standards of that the employer had a right to expect or because of a series of violations of employment rules which demonstrate a regular and wanton disregard of his obligations to the employer. 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.

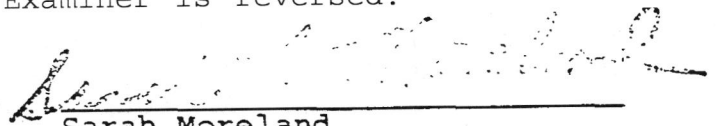
In this case, while the claimant's conduct does not rise to the level of gross misconduct, his solicitation of business from distributors had exclusive distributorships with his employer amounts to misconduct connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Although the claimant did not contact the suppliers while on the employer's time or premises, his conduct can be viewed as a breach of his fiduciary duty of loyalty to his employer while still employed and a finding of "misconduct

connected with his work" is warranted.

DECISION

The claimant was discharged for misconduct connected with tune work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning December 24, 1983 and for the nine weeks immediately following.

The determination of the Claims Examiner is reversed.



Sarah Moreland
Hearing Examiner

Date of hearing: 2/2/89

rc

(916)-Specialise ID: 43722

Copies mailed on 2/13/90 to:

Claimant

Employer

Unemployment Insurance - Wheaton - MABS