



**DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 390-BR-82

DATE: March 23, 1982

APPEAL NO.: 18568

S. S. NO.:

CLAIMANT: Paula Hatfield

EMPLOYER: Tri-State Oil

L. O. NO.: 26

APPELLANT: CLAIMANT

ISSUE

Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 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 MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR 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 April 24, 1982

- 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 Appeals Referee.

The Claimant was employed at the minimum wage pumping gas at the employer's premises in Pocomoke, Maryland from November 1980, to June 4, 1981.

It was the employer's policy that any shortage must be paid back by each employee to the employer. The Claimant did not suffer unusually high or frequent shortages, but occasionally a small shortage did occur.

The Claimant investigated the legality of the requirements that she pay back the shortages and came to the conclusion that the requirement was illegal. The Claimant then notified the employer in writing that she would refuse to reimburse her employer for the shortages. The employer then discharged the Claimant for this reason.

The Board concludes that the Claimant was correct in her assertion that she could not be required to reimburse her employer for these shortages. The Fair Labor Standards Act, as interpreted by the U.S. Department of Labor in 29 C.F.R. Section 531.35 and in its interpretive letter of January 1, 1978, states that deductions for shortages cannot be made from wages of gasoline service stations if such deductions bring the employee's remuneration below the minimum wage.

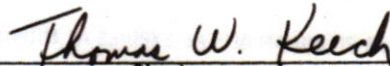
The Claimant in this case was a gasoline service station worker making the minimum wage. The requirement that she reimburse her employer for shortages amounts to a deduction from her pay, a deduction which would bring her salary below her minimum wage. Clearly, the requirement of such a reimbursement was illegal.

The Claimant was discharged for resisting an attempt on the part of her employer to reduce her salary below the legal minimum wage. This is a non-disqualifying reason within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

DECISION

The unemployment of the Claimant was due to a non-disqualifying reason within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is entitled for benefits from the week beginning May 3, 1981, if she is otherwise eligible under the Law.

The decision of the Appeal Referee is reversed.


Chairman


Associate Member

K:D
gm

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STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS

JOHN J. KENT
 Chairman

HENRY G. SPECTOR
 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

- DECISION -

CLAIMANT: Paula Hatfield

DATE: August 10, 1981

APPEAL NO.: 18568

S. S. NO.:

EMPLOYER: TRI-State Oil

L. O. NO.: 26

APPELLANT: Claimant

ISSUE: Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) 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, 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 August 25, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Paula Hatfield - Claimant
 Gladys M. Johnson - Legal Assistant,
 Legal Aid Bureau, Incorporated

FOR THE EMPLOYER:

Paulette Kitching -
 Manager
 Diane Davis -
 Attendant

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits effective June 7, 1981. She has a weekly benefit amount of \$66.00.

The claimant had been employed as a gasoline service station attendant from November, 1980 until June 4, 1981 when she was terminated by her employer. She worked from 2:00 p.m. to 9:00 p.m., worked from forty to forty-eight hours per week, and was paid \$3.35 per hour.

The claimant had written a letter to the District Manager and the Manager to say if she was fired for shortages, she would take the both of them to court. The claimant developed a shortage of about \$13.00 which she refused to pay. The claimant had shortages very seldom and they were generally from \$1.00 to \$2.00. The claimant was responsible for the shortages which were incurred while she was working. The claimant refused to pay the shortage of about \$13.00 as she felt it was not due to her errors but was due to the inaccuracy of the pumps. However, the pumps were checked and found to be O.K. The claimant had paid several previous shortages out of her pocket. No deduction from the employee's wages had been made to cover the inventory shortages. Further, the claimant relied on the rules of the United States Department of Labor as to how the Fair Labor Standards Act affects gasoline service stations. However, the employer had not made any deductions from the employee's wages to cover inventory shortages. The United States Department of Labor and more particularly, the Fair Labor Standards Act, prohibits any deduction from an employee's wages to cover the cost of uniform or to cover cash or inventory shortages made to the extent it reduces the employee's wages below the Statutory minimum. Such was not so in this case.

The employer received about five customer complaints about the claimant's attitude. She was indifferent toward customers and would not wait on them promptly.

When the claimant refused to pay the shortage of about \$13.00, together with the customer complaints which employer had received about the claimant's bad attitude, the claimant was terminated by the employer.

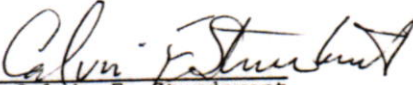
COMMENTS

The claimant's acts in refusing to pay a shortage for which she was responsible and her bad attitude toward customers constitutes misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Therefore, the Claims Examiner's determination that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law will be affirmed.

DECISION

The claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from unemployment insurance benefits from the week beginning May 31, 1981 and the six weeks immediately following.

The determination of the Claims Examiner is affirmed.



Calvin E. Sturdevant
APPEALS REFEREE

DATE OF HEARING: July 30, 1981
ras
(7810,B -- ?)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Crisfield
Legal Aid Bureau, Inc.