



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
MAURICE E. DILL
Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 391-W-35
Date: June 17, 1985
Appeal No.: 10483
S. S. No.:
Claimant: Edgar Hart , Jr.
Employer: Vista Chemical Company
ATTN : Dale Eckard
Emp. Relations Rep.
L.O. No.: 2
Appellant: CLAIMANT

Issue: Whether the claimant was discharged for misconduct, connected with his work, within the meaning of §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 CIRCUIT 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 ON July 17, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Edgar Hart , Jr.
Edward Mullaney, Union Rep.

FOR THE EMPLOYER:

Dale Eckard,
Employee Relations
Representative

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 Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a welder for over twenty years. At the time of separation from employment, he was earning \$12.04 per hour.

On August 4, 1984, the employer sponsored a picnic for its employees which was held at the Milford Mill Swim Club, a public place. While there, the claimant became involved in a fight with another patron of the swim club which arose when the claimant protested the use of language he felt was inappropriate in the presence of his children, who also attended the picnic. The employer had a rule which prohibited fighting "on company time and premises." The claimant was fired for fighting during the picnic even though he was on a public place at the time of the incident. He was later reinstated when his union intervened.

The Claims Examiner held that the act was not connected with the claimant's work and granted unemployment insurance benefits. However, an Appeals Referee reversed that determination, ruling that act was connected with the work, and constituted gross misconduct.

CONCLUSIONS OF LAW

The claimant's act was not connected with his work within the meaning of unemployment insurance law. Employment Security Board v. Le Cates, 218 Md. 202, 145 A.2d 840 (1958); Fino v. Maryland Employment Security Board, 218 Md. 504, 147 A.2d (1959); Ebb v. Howard County Board of Education, 214-BH-85. The claimant was not in the course of his employment at the time of the incident: he was in the course of a social activity with persons with whom he happened to work.

DECISION

The claimant was discharged, but not for misconduct connected with his work, within the meaning of §6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with Vista Chemical Company.

The decision of the Appeals Referee is reversed.

Maurice E. Dill

Associate Member

Harold A. Morris

Associate Member

Thomas W. Keech

Chairman

D:W:K

kbm

Date of Hearing: February 19, 1985

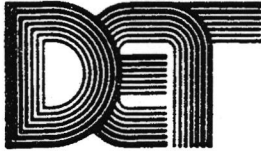
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Mr. Edward Mullaney
Union Representative
Local 853 - ICWU
3441 Fairfield Road
Baltimore, MD 21226

UNEMPLOYMENT INSURANCE - GLEN BURNIE



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Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Claimant: Edgar Hart, Jr.

Date: **Mailed:** Oct. 31, 1984

Appeal No.: 10483-EP

S. S. No.:

Employer: Vista Chemical Company

LO. No.: 2

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct connected with his work within the meaning of Section 6(c) 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 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 November 15, 1984

- APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Edgar Hart, Jr. - Claimant
Accompanied by Charles Shipley -
President - Local 853
- Icwu

Dale Eckard - Employee
Relations Representative

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Glen Burnie, effective August 26, 1984.

The claimant had been employed by Vista Chemical Company for over twenty years as a welder at a last pay rate of \$12.04 per hour until August 14, 1984.

On August 4, 1984, the company sponsored a picnic at the Milford Mills Swim Club. While there, the claimant became involved in a fight. Although it was not clear to supervision who initiated the altercation, the employer's representative witnessed that claimant restarted the altercation and continued to be the aggressor until the owner of the club threatened to notify the police.

In November, 1983, the claimant had been engaged in a physical altercation, for which he received a ten-day disciplinary suspension, and he was further warned that should he become involved at any time in the future in an incident of this or similar nature, he would be subject to immediate discharge.

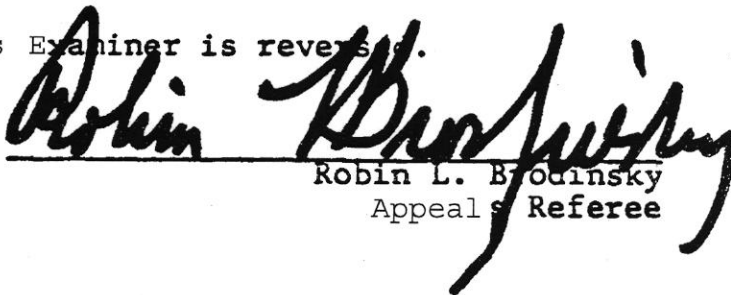
CONCLUSIONS OF LAW

Horseplay, any act of aggression, assault, or involvement in a fight at a company picnic is an action which has occurred in the course of the employer's business. In the instant case, the claimant's action of becoming involved in an altercation, and continuing to be the aggressor was a deliberate act showing gross indifference to the employer's interest and constitutes "gross misconduct connected with his work" within the meaning of the Law. Accordingly, the determination of the Claims Examiner must be reversed.

DECISION

It is held that the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning August 12, 1984 and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount or \$1,750.00 and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Robin L. Brodinsky
Appeals Referee

Date of hearing: 10/8/84
amp/5516
(Appeldt)
Cassette No. 7162
Copies mailed on October 31, 1984 to:

Claimant
Employer
Unemployment insurance - Glen Burnie