



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.:	396 -BR-86
	Date:	May 29, 1986
Claimant: <u>Maria Ruscitella</u>	Appeal No.:	8505133
	S. S. No.:	
Employer: <u>Theriahult's</u>	L.O. No.:	8
	Appellant:	EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 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 **June 28, 1986**

— 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 Hearing Examiner found as a fact in this case that the claimant attended a pre-incorporation organizational meeting of a company to be known as Ceara International, Incorporated on March 16, 1985 as an almost accidental result of having asked one of the principals, Mr. Jeff Mayer, for a ride as a result of her having car trouble. There is no testimony in the record from any witness to support this finding of fact. Even the testimony of the claimant and Mr. Mayer was to the effect that the claimant agreed on the morning of the 16th on the telephone, prior to the claimant leaving her own house, that the claimant would attend this meeting. For this reason, the Board will reject the Hearing Examiner's findings of fact and make new findings of fact based on its own evaluation of the evidence.

The claimant was employed as both General Counsel and General Manager of the employer from April 23, 1983 until March 25, 1985. She was discharged on the latter date. The employer was a doll auctioneer. The employer included in its catalog not only dolls but other items. One of the items was doll dresses which were supplied to the employer by a business entity known as the Panagides Group.

Another employee of the employer was named Jeff Mayer. He was a doll curator and a trusted and valued employee.

Mr. Mayer suddenly resigned without previous notice to the employer on March 15, 1985. This was a Friday afternoon, and the principals of the employer had been out of town.

On the following day, the claimant, on the invitation of Mr. Mayer, the ex-employee, attended a meeting of a group of people associated with the Panagides Group. This group of people held on that day a pre-incorporation meeting for the purpose of organizing a new business entity to be named Ceara International, Incorporated. The claimant knew that Mr. Mayer was involved in this new enterprise. The claimant attended the meeting for the purpose of giving legal advice to the parties.

Ceara International was organized for a number of purposes, but the primary one was to enter into the doll costume business. Ceara International intended to import doll costumes and enter into commercial transactions with the claimant's employer by selling these costumes either to the employer or through the employer's catalog. The claimant was aware that this was one of the primary purposes of the corporation to be organized.

The claimant was also planning to actively participate in the corporation both by the marketing of women's blouses and by becoming an officer in the corporation to be formed.

On the following night, March 17, 1985, the employer telephoned the claimant, urgently asking her if she had any information with respect to why Jeff Mayer had left. During the following week, the employer repeated these questions of the claimant. The claimant deliberately misled her employer to believe that she had no knowledge of the reason Mr. Mayer had left or his plans to enter into a closely related business.

When the employer confronted the claimant more closely with its knowledge of Ceara International, the claimant invoked the attorney client privilege with respect to any knowledge she might have with respect to Ceara International, Incorporated or the activities of Jeff Mayer.

Although the claimant was employed as General Counsel and office manager, she was not admitted to the Maryland Bar at the time of these incidents. She was admitted to the bar at the State of Pennsylvania.

CONCLUSIONS OF LAW

The claimant committed gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law when she created a conflict of interest for herself by giving legal advice to a group which was competitive to her employer. Ceara International was clearly competitive with the employer with respect to competing for the employer's valued and key employee. Ceara International also intended to become a supplier of the employer. Ceara International was also putting itself in a position to become a potentially direct economic competitor of the employer.

This conflict of interest is so clear that it was recognized by the claimant herself in her conversations with the employer. The claimant had placed herself in a position where she could not even advise her employer of the potentially competitive activities of its key ex-employee or the potentially competitive activities of an emerging company in the field. By placing herself in this position, the claimant clearly violated the duty of loyalty which she owed to her employer and committed a deliberate violation of standards of behavior her employer had a right to expect. This violation showed a gross indifference to the employer's interest and thus met the standards of Section 6(b) of the law.

The claimant also deliberately misled her employer with respect to the activities of a key ex-employee who was engaging in a potentially competitive business. This also violates the duty owed to her employer and is also gross misconduct.

The claimant also was actively participating in this potentially competitive business as a legal advisor, an officer and a potential marketer of blouses. This is also gross misconduct.

The claimant's position is unique and somewhat self-contradictory. She claims that she was not practicing law or giving legal advice at the meeting which took place in Bethesda, Maryland, but at the same time she claims that whatever she did there did give rise to the attorney-client privilege. Whatever the merit of her claim that she was not practicing law on March 16, 1985 in Bethesda, she was clearly practicing law as an attorney for the employer¹ and had the duty to avoid creating conflicts of interest between herself and her employer by actively participating in the formation of a potentially competitive enterprise.

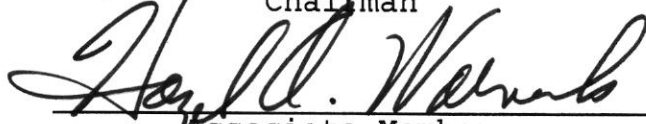
The totality of the claimant's conduct is clearly gross misconduct within the meaning of Section 6(b) of the law.

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. She is disqualified from the receipt of benefits from the week beginning March 24, 1985 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1,750.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:W
kmb

¹ See, Article 10, Section 32(b) of the Annotated Code.

COPIES MAILED TO:

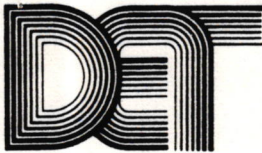
CLAIMANT

EMPLOYER

Richard E. Rice, Esquire

Arnold P. Popkin, P.A.

UNEMPLOYMENT INSURANCE - ANNAPOLIS



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

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

Date Mailed: 2-28-86

Claimant: Maria Ruscitella

Appeal No.: 8505133-EP

S. S. No.:

Employer: Theriault's, Inc.

L.O. No.: 8

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with her work within the meaning of Section 6(c) of the Law. Whether the claimant was discharged for gross misconduct connected with her work within the meaning of Section 6(b) 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 March 17, 1986

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Maria Ruscitella - Claimant
Richard E. Rice = Attorney
Jeff Mayer, Marlyn Wilson,
John Patrick Ogle, Patricia
Noyce, and Sarah Peace -
Witnesses Maureen Johnson

Arnold P. Popkin -
Attorney and George
Theriault and
Florence Theriault

FINDINGS OF FACT

The claimant began to work for the employer, a doll auctioneer and dealer, as a full-time general counsel and manager, April 28, 1983. Her last day of work was March 25, 1985, when she was discharged by the employer.

The testimony and evidence reveal that the claimant, at the time of her hire, was a member of the Pennsylvania Bar. Subsequent to her discharge, she was admitted to the Maryland Bar. Her original salary was \$16,000.00 per annum and at time of separation, she was earning \$29,500.00 per annum.

For a short period of time prior to the date of the claimant's discharge, the employers, George and Florence Theriault, were in California on business. The claimant, as was the practice, was left in charge of the business. Upon returning to Annapolis on a Sunday evening, the employer went directly to the place of business and discovered two items that caused him much distress. One item was a letter of resignation from Jeff Mayer, the curator of dolls, and a highly valued employee. The second item was a sealed letter addressed to the claimant, Maria Ruscitella, Esquire, at the employer's post office box address. The employer immediately opened the letter, as their practice was to open all mail addressed to their office. Enclosed was a letter addressed to the claimant dated March 20, 1985 on the letterhead of Panagides Group, Inc. of Bethesda, Maryland referring to the attached copy of minutes of the first meeting of the Board of Directors and officers of Ceara International, Inc. The letter requested any suggested changes and referred to an April show and clothes to be made in and imported from Brazil. In addition, reference was made in the letter of money in the amount of \$500.00 to be invested by the claimant in the proposed company. The letter was signed by Marlyn C. Wilson, an aunt of Jeff Mayer, the recently resigned curator, and a witness involved in this appeal. Attached to the aforementioned letter was a copy of the minutes of a March 16, 1985 organizational meeting of the proposed Ceara International, Inc. with the claimant to be named corporate secretary with twenty percent of the ownership. Important facts are that Jeff Mayer, the recently resigned curator, was to be a twenty percent owner and treasurer and that one of the operations of the proposed corporation was to deal in doll costumes.

The connection of the claimant to the proposed organizational meeting of Ceara International, Inc. was precipitated by the claimant having requested from Jeff Mayer on March 16, 1985 a ride to the subway in the Washington area in order that she might travel to Virginia, the claimant's car having been inoperable. Jeff Mayer consented to the claimant's request and inquired of the claimant if there was any objection on the claimant's part to accompany him on the way to the subway to a meeting at his uncle's house in Bethesda for the purpose of giving legal advice to his family about a proposed venture regarding the importation

of women's clothes made by Cottage Industries in Brazil. Jeff Mayer's uncle, Stahis Panagides, at whose home the meeting was held, was a prime mover of the intended enterprise and had experience with the Cottage Industries in Brazil. The claimant did attend the meeting with Jeff Mayer for a brief time and gave some legal advice to the group and then went on her way.

After the employers read the letter addressed to the claimant, Ruscitella, and on the next working day, approached the claimant about the letter, at which time she invoked lawyer-client privilege and was summarily discharged.

It is incumbent upon the Hearings Examiner to make certain Findings of Fact relevant to this appeal. First, there was no attempt on the part of the claimant to deceive her employer. Second, the claimant was permitted to practice law on her own, although not in Maryland, by her employer. Third, the claimant was not aware, either prior to the meeting or during the meeting, that dolls, the business of her employer, were to be involved in the proposed enterprise.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was separated for a non-disqualifying reason within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, is supported by the testimony and evidence before the Hearings Examiner. The Hearings Examiner finds evidence of neither gross misconduct nor misconduct connected with the work in the part of Maria Ruscitella. The Law defines gross misconduct as conduct which was a deliberate and willful disregard of the standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest and/or a series of repeated violations of employment rules proving that the claimant regularly and wantonly disregarded obligations to the employer. The Hearings Examiner finds no conduct on the part of the claimant consistent with this definition.

The Hearings Examiner appreciates the employer's concern in reading the letter and minutes of the proposed corporation upon returning from California. Also, the Hearings Examiner appreciates the employer's becoming upset upon the resignation of its valued curator, Jeff Mayer. However, supporting testimony of the claimant and her witnesses present a different scenario than the hastily arrived at conclusion of the Theriaults that the claimant was being disloyal by becoming involved, without their knowledge, in the competitive enterprise.

The claimant challenges the acceptance into evidence of the letter from Marlyn C. Wilson with attached minutes. The Hearings Examiner finds the letter and minutes admissible evidence as it was the employer's business practice to open all mail received at the place of business.

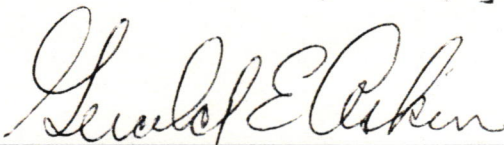
It is for the aforementioned reasons that the determination of the Claims Examiner shall be affirmed.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the claimant's separation from her employment with Theriault's, Inc.

The determination of the Claims Examiner is affirmed.

The Employer's Protest is disallowed.


Gerald E Askin
Hearings Examiner

Date of hearings: 6-28-85, 8-16-85 and 1-8-86
amp/Simms
5545, 5544, 5543, 0096, 0100
Copies mailed on February 28, 1986 to:

Claimant
Employer
Unemployment insurance - Annapolis

Richard E. Rice, Esquire

Arnold P. Popkin, P.A.