Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor

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Secretary

Board of Appeals
1100 North Eutaw Street, Room 515
Baltimore, Maryland 21201
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- DECISION -

Claimant:
SPENCER V. KING

Employer:
WICOMICO CO MD

Decision No.: 04027-BR-94

Date: December 9, 1994

Appeal No.: 9414967

S.S. No.:

L.O. No.: 12

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200.*

The period for filing an appeal expires: January 8, 1995

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the following the findings of fact and reverses the decision of the Hearing Examiner.

The claimant was scheduled to work June 27, June 30, July 4, and July 6, 1994. The claimant did not call-in or report to work. The employer, according to company policy, considered that the claimant had abandoned his job after the fourth consecutive absence without excuse or contact from the claimant.

The claimant was required to attend work regularly and to document both the he has good reason for each absence and that he notify the employer of each absence. Dodson v. Allied Chemicals, 612-BR-83 The claimant failed in his duty to keep his employer informed as to the reason for each of his absences.

The Board finds that failure to report to work without notice and permission on four successive, scheduled days is a deliberate and repeated violation of employment rules which rises to the level of gross misconduct.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning May 29, 1994 and until he becomes reemployed, earns at least twenty times his weekly benefit amount ($4460) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Clayton A. Mitchell, Sr., Associate Member

Donna Watts-Lamont, Associate Member

kjk
Copies mailed to:

SPENCER V. KING
WICOMICO CO MD
ROBERT E. SAUER
ROBERT SAUER

CORRECTED DECISION

UNEMPLOYMENT INSURANCE APPEALS DECISION

SPENCER V. KING

SSN

Claimant

vs.

WICOMICO CO MD

Employer/Agency

Before the:

Maryland Department of Economic and Employment Development
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 333-5040

Appeal Number: 9414967
Appellant: Employer
Local Office: 12 / Salisbury

September 6, 1994

For the Claimant: PRESENT, PAMELA KING

For the Employer: PRESENT, WICOMICO CO MD, ROBERT SAUER, SGT. MICHAEL HUNTER

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant was a Correctional Officer II at the Wicomico County Detention Center. He started employment with this employer on June 24, 1993 and his last day of work was May 29, 1994.

On May 4, 1994, the claimant was involved in an altercation with an inmate. As a result, some blood from an inmate was mixed with that of the claimant, causing the claimant to be concerned that he may have been affected with the HIV virus. The claimant later discovered that the inmate in question had in fact been diagnosed as HIV positive. Tension developed between the claimant and some members of the employer's staff as a result of this incident.

Apparently, some members of the employer's staff did not believe that the incident had occurred, even though the claimant filed a report regarding same. Later, the claimant injured his knee when he was involved in a bicycle accident. The claimant began treatment with a psychologist on May 31, 1994 as a result of the stress he felt regarding the incident with the inmate. The claimant was also treated by a doctor for the knee injury, who had advised the claimant not to work for a period of time. That doctor provided a note on June 22, 1994 indicating that the patient could possibly return to work in one week. The claimant was to report back to his doctor at 1:00 p.m. on June 29, 1994, apparently to determine whether he could in fact return to work.

On June 28, 1994, the claimant met with the warden and other detention facility officials. The warden directed the claimant to report to the jail physician on June 29, 1994 for a determination of the claimant's ability to return to work. The claimant did not report to the jail physician because he believed he would be harassed. The claimant's conclusion that he would be harassed was based on his meeting of June 28, 1994 with the warden and other officials. The claimant was scheduled to work on June 29, 1994, June 30, 1994 and July 4, 1994 through July 6, 1994. The claimant did not report to work for any of those days and was considered by the employer to have voluntarily abandoned his job. The employer's policy states that when an employee is absent more than three days, without notice, he shall be considered to have terminated his employment (Employer's Exhibit #1). The claimant did not return to work after the meeting of June 28, 1994 because he thought he had been placed on "stress leave." Although the employer has no policies authorizing such leave, the claimant heard rumors to the effect that he had been placed on "stress leave" and did not contact the employer to verify that fact.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994) provides for a limited disqualification from benefits where the claimant is discharged (or suspended) as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been judicially defined as a "...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, 132, 314 A.2d 113 (1974).

It has been held that as a condition of employment, an employer has the right to expect its workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detainment or emergency, to receive prompt notification thereof. See, Rogers, supra. Failure to meet this standard amounts to misconduct within the meaning of Section 8-1003.

EVALUATION OF EVIDENCE

There is no question that the claimant failed to report to work when required. It is also true that the claimant did not provide proper notice to the employer that he would not be at work during the period of June 29, 1994, June 30, 1994 and July 4 through July 6, 1994. However, the claimant's conduct does not rise to the deliberate and willful disregard of his obligations to the employer, under which different circumstances, might give rise to a finding of gross misconduct connected with the work.

In this case, the claimant made a serious error in judgment when he did not contact the employer after hearing that he had been placed on "stress leave." The claimant was relying entirely on hearsay from people who would not necessarily know the claimant's actual status. For example, the claimant maintains that the warden's wife told another party that the claimant had been placed on "stress leave." In addition, the claimant maintains that another member of the employer's staff informed the claimant's brother-in-law that the claimant had been placed on "stress leave." The claimant was a relatively new employee and may have believed that the employer provided time off for correctional officers who were suffering from stress. However, that fact does not excuse the claimant's inaction in not contacting the employer to ascertain whether the provisions for time off under these conditions exist. It simply was not reasonable for the claimant to rely on hearsay, even if the hearsay came from people who had some direct or indirect connection with the employer.

In addition, there is no evidence to indicate that the claimant was advised to be off work as a result of stress at any time after June 13, 1994. Therefore, it again was unreasonable for the claimant to think that he was placed on "stress leave." In fact, the claimant's excuse to be off work stemmed from his knee injury, not stress.

Although the claimant used poor judgment in not reporting to the jail physician when ordered to do so, his actions do not amount to gross misconduct, because there is no indication in this case, that the claimant willfully and wantonly disregarded his obligations to the employer. It is obvious that the claimant is extremely concerned about his physical condition in that he fears he may contract AIDS. The Hearing Examiner believes that the claimant became so obsessed as a result of the incident of May 4, 1994 and what he saw as harassment by the employer after that, that his judgment was temporarily impaired. Therefore, the claimant's actions do not rise to the level which shows a deliberate and willful disregard of the standards that his employer had a right to expect. The Hearing Examiner also believes that the claimant was harassed by his employer, at least to some degree. The claimant may have exaggerated the degree of harassment in his own mind because of his obsession with his health situation. But, the employer has not refuted the allegations made by the claimant that he was being harassed and that the employer was in fact calling him a liar about the incident of May 4, 1994. Even if that is not the case, it is clear that the claimant believed that it was. Therefore, because of the unique circumstances of this case, we do not have a finding of gross misconduct, even though an employee not reporting to work in another case without these unique circumstances might well be found to have committed acts which constitute gross misconduct.

DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994). Benefits are denied for the week beginning (Sunday) May 29, 1994 and for the six weeks immediately following.

The determination of the claims examiner is modified as to the start date of the penalty.

F. M. Ward, ESQ
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review **either in person or by mail** which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **September 21, 1994**.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: August 30, 1994
DW/Specialist ID: 12623
Seq. No.: 001
Copies mailed on September 6, 1994 to:

SPENCER V. KING
WICOMICO CO MD
LOCAL OFFICE #12
WICOMICO CO MD
ROBERT SAUER