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

— DECISION —

Decision No.:	41-BR-93
Date:	January 13, 1993
Claimant: Curtis O. Battle	Appeal No.: 9221223
	S. S. No.:
Employer: Mass Transit Administration	L. O. No.: 1
	Appellant: CLAIMANT
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE 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 February 12, 1993

— 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. Based on these same facts, the Board reaches different conclusions of law.

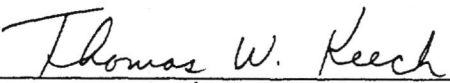
The claimant in this case could not continue employment because he failed to pass the required test to obtain his federal Commercial Driver's License. The claimant was required, at times, as part of his work duties, to drive heavy trucks. At first, he could legally do this without this particular license, but this license then became legally required. His employer could not continue to employ the claimant at his job unless he obtained his license. The claimant failed to obtain this license because he repeatedly failed the test. He studied for the test and took classes to prepare for the test, but he was not able to pass it. Because of this his employer could no longer use him on this job.

There was no misconduct involved in the claimant failing to pass the test. This is not a case where an employee simply fails to take a required test, or where an employee negligently fails to make reasonable preparation to take a test. The claimant's efforts to prepare himself for the test were reasonable. He failed the test due to simple inability. An inability to perform the requirements of one's job, despite genuine efforts, does not amount to misconduct. The claimant will therefore, be held to have been discharged, but not for any misconduct.

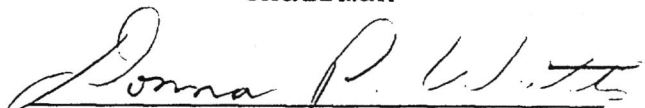
DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Mass Transit Administration.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:D
kmb