DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— DECISION —

Decision No.: 415 -BR-86

Date: June 2, 1986

Claimant: Andre Copeland

Appeal No.: 8602187

S. S. No.:

Employer: Ryland Group

L.O. No.: 45

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 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 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 2, 1986

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board reverses the decision of the Hearing Examiner.

The Board adopts the findings of fact of the Hearing Examiner with the exception of those facts found with respect to January of 1986. The Board finds as a fact that the claimant was informed that he would have to work overtime on January 13, 1986, but that the claimant was excused when he told his foreman that he had transportation problems. With respect to January 14, 1986, the claimant was aware that he was required to work overtime but failed either to work the overtime or to explain his failure to the employer.

The Board disagrees with the Hearing Examiner's legal conclusions that the claimant's refusal to work mandatory overtime on two occasions does not amount to gross misconduct. The claimant was told when hired that overtime would be required. He was verbally warned about his refusal to do so in June of 1985, and a written warning was also given. Although his refusal on January 13, 1986 was excused, he gave no reason for his refusal of January 14, 1986. The employer desperately needed the claimant's particular crew to work overtime during that week in January.

The claimant's conduct was a deliberate violation of standards of conduct his employer had a right to expect, showing a gross indifference to his employer's interest. This is gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance 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. He is disqualified from receiving benefits from the week beginning January 12, 1986 and until he becomes reemployed, earns at least ten times his weekly benefit amount ($1060.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:W

kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Automatic Data Processing

UNEMPLOYMENT INSURANCE - NORTHWEST

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed: April 11, 1986

Claimant: Andre Copeland

Appeal No.: 8602187-EP

S. S. No.:

Employer: Ryland Group

L.O. No.: 45

Appellant: Employer

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 April 28, 1986

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Gary Rothgeb - Plant Superintendent
Bill Berwick - Automatic Data Processing

FINDINGS OF FACT

The claimant was employed by Ryland Group from March 20, 1985 until January 15, 1986 as a roof truss assembler. At the time of his separation from employment, the claimant was employed full-time and earned $5.00 per hour.

In the Employee Handbook, issued to all new employees, employer's policy concerning mandatory overtime is outlined. It states simply that upon forty-eight hours of advanced posted notice, mandatory overtime will be required. In emergency conditions, overtime can be required on a two-hour notice. The employer uses foremen to tell the crews about overtime.

On June 17, 1985, the claimant was issued a written warning for not working Saturday. This was posted two to three days prior and the claimant did not come in. On September 27, 1985, the claimant returned from break late. This was critical because the employer uses an assembly line method to assemble the trusses.

On January 15, 1986, mandatory overtime was required. This was because a machine had gone back into operation and all employees were asked to work ten-hour days. They were informed on Monday that all employees would work ten hours a day all that week. The claimant did not work a ten-hour day, indicating that he had transportation problems. As a result, three employees left at 3:30 p.m., the end of an eight-hour day.

The claimant was terminated for leaving at that time.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute, means 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.

It is concluded from the evidence presented at the Appeals Hearing that the claimant's behavior amounts to misconduct connected with the work within the meaning of Section 6(c) of the Law, in that he did on several occasions refuse to work mandatory overtime as outlined in the Employee Handbook. However, refusal to work mandatory overtime on a second occasion does not rise to gross misconduct as contemplated by Section 6(b) of the Law. Therefore, the determination of the Claims Examiner, which imposed a six-week penalty under Section 6(c) of the 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. He is disqualified from receiving unemployment insurance benefits for the week beginning January 12, 1986 and and five weeks immediately following.

The determination of the Claims Examiner is affirmed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.

Seth Clark
Hearings Examiner

Date of hearing: March 11, 1986
ras
(1566 ---- Gray)

Copies mailed on April 11, 1986 to:

Claimant
Employer
Unemployment Insurance - Northwest

Automatic Data Processing