Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

— DECISION —

Decision No.: 441-BH-89

Date: May 26, 1989

Claimant: Noreata Ivey

Appeal No.: 8900441

S. S. No:

Employer: Catterton Printing Company

L. 0. No.: 50

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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, 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 AT MIDNIGHT ON June 25, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Noreata Ivey, Claimant

FOR THE EMPLOYER:

Employer not present

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 Economic and Employment Development's documents in the appeal file.

The Board notes that the employer neither appeared nor testified at the hearing before the Hearing Examiner or the further hearing held before the Board of Appeals. The Hearing Examiner's decison has been based solely on a report in the agency file summarizing a phone call made by someone from. the agency to the employer's facility.

FINDINGS OF FACT

The claimant was employed for the Catterton Printing Company as a stripper from July 5, 1988 through November 30, 1988. During the following month, she was informed that she was doing good work. She missed a few days from work, but each of these days was for a compelling reason. In addition, the claimant provided medical evidence for each day missed and also notified the employer in a timely manner. The claimant heard her supervisor say that he didn't like her and felt that she was overpaid. In response, the claimant complained to the owner on October 29, 1988. The owner, in response to the complaint, stated that the claimant was doing fine and would not be fired. On November 30, 1988, however, the claimant was fired. She had not been warned in any manner about absenteeism, and the subject of absenteeism was not brought up at the time that she was fired. She was told that her work "stinks." The supervisor who gave this evaluation of the claimant's work refused to discuss it further with her, and she was told to leave that day.

The manager who fired the claimant had a reputation for being antipathetic to black workers. He fired seven black workers in the period between January of 1989 and April of 1989. In addition, the company was moving production from its downtown operations to Waldorf, Maryland, and there apparently were already sufficient production workers at the Waldorf operation to handle at least most of the production needs.

CONCLUSIONS OF LAW

The burden is on the employer to show misconduct or gross misconduct in a discharge case such as this. The agency's written summary of a phone call to the employer's premises certainly does not fulfill the employer's burden of showing misconduct in this case. The claimant testified at both

hearings. The Board finds the claimant's testimony to be completely credible. The Hearing Examiner's reliance on the agency's summary of a phone call to the employer in order to make findings of fact that the claimant committed misconduct is an error of law. Where such hearsay testimony is clearly contradicted by the testimony of a live witness at a hearing, and where there is no specific finding that the witness's testimony isn't credible, a reliance on the hearsay evidence in the file to make findings of fact is inappropriate.

The claimant has shown that she was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. She need prove no more in order to lift the disqualification from benefits under Section 6 of the law. Once the claimant has shown that she committed no misconduct, she does not have to prove why the employer actually did fire her. In this case, the claimant provided substantial evidence that the employer fired her because of the manager's prejudice against black workers and because the shifting of the employer's operations would require fewer workers in general. These would be the Board's findings, were it necessary for the Board to determine the exact cause of the claimant's discharge. The Board has refrained from making these findings, however, because the claimant need only prove that she was discharged and that she committed no misconduct causing that discharge.

DECISION

The claimant was discharged from employment, but not for any misconduct within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment at Catterton Printing Company. The claimant may contact her local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.

Thomas W. Koch
Chairman

Donna P. Watts
Associate Member

Hazel A. Warnick
Associate Member

K:W:W
kbm

Date of Hearing: May 23, 1989

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CLAIMANT

EMPLOYER

OUT-OF-STATE CLAIMS

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

— DECISION —

Date Mailed: 2/16/89

Claimant: Noreata Ivey

Appeal No: 8900441

S.S. No.:

Employer: Catterton Printing

L.O. No.: 43

Appellant: CLAIMANT

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 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 3, 1989

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT: Claimant Present

FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant was employed by Catterton Printing from July 5, 1988 to November 30, 1988. She was a stripper earning $10.75 hourly.

The claimant was discharged by the employer after she received at least seven oral warnings for failing to call in or report for work. She was also warned for leaving her work area and socializing too much.

The claimant was absent on several occasions for illness, for her child's problem and also for funeral leave for which she obtained permission.

EVALUATION OF THE EVIDENCE

The claimant appeared and testified. She denied all of the employer's charges particularly that of leaving her work area.

The employer's information was relayed to the agency by a phone call and is hearsay evidence.

It is concluded that the evidence submitted by the employer regarding the claimant's leaving her work area and socializing, although hearsay, is true and credible.

The claimant's evidence and testimony regarding this matter is not credible.

CONCLUSIONS OF LAW

It is found that the claimant was discharged by the employer for socializing and leaving her work area after several warnings. This constitutes misconduct connected with the work within the provisions of Section 6(c) of the law. The determination of the Claims Examiner 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. She is disqualified from receiving benefits from the week beginning November 27, 1988 and the nine weeks immediately following.

The determination of the Claims Examiner is affirmed.

John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: February 10, 1989
kmb/Reese/1206
Copies mailed on February 16, 1989 to:

Claimant
Employer
Out-of State Claims (MABS)