

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

	Decision No.:	466 -BH-89
	Date:	June 2, 1989
Claimant: Steven Joiner	Appeal No.:	8502092
	S. S. No.:	
Employer: Santoni's Market, Inc.	L. O. No.:	22
	Appellant:	REMAND FROM COURT

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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.

July 2, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Steven Joiner, Claimant
Robert Lynott, Attorney

FOR THE EMPLOYER:

Jim Stuller,
Unemployment Tax
Service

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.

This case was remanded to the Board of Appeals by the Circuit Court for Baltimore City.

FINDINGS OF FACT

The claimant was employed by Santoni's Market, Inc. from April 2, 1984 until on or about September 6, 1984, as a produce clerk. At the time the claimant was hired, he was offered \$4.40 an hour for at least 35 hours a week of work, and for the first 1-1/2 months he worked at least 40 hours per week. At the time that he was hired, the claimant made the employer fully aware of the fact that he was attending school and that he would be graduating in May of 1984 and would be seeking work in the computer field after graduation. The person who hired him, Paul Santoni, told him that he could take time off for interviews, and in fact he had many students working for him, so he understood the situation.

The claimant continued to work for Santoni's Market, but after the summer of 1984 his hours were cut back to approximately 16-20 hours per week. During this time period, the claimant was looking for permanent full-time work in the computer field. The school he attended would set up interviews for him with employers. Santoni's Market, however, rarely gave him time off for interviews, and so the claimant arranged to attend these interviews on his own time when he wasn't working. The claimant generally had a good attendance record while he worked for the employer.

On or about September 6, 1984, the claimant telephoned the employer at 8:30 in the morning to let him know that the claimant had an interview for a computer job in Washington, D.C. and might be late for work. The claimant was scheduled to report to work at 1:00 p.m. that afternoon. The claimant had not been able to notify the employer any earlier because he himself had only been notified about the interview the night before and was unable to make arrangements to change the interview. The employer, Paul Santoni, informed the claimant that if he did not report to work on time he needn't return to work at all. The claimant decided that it was more important for him to attend the interview because this was an interview for a permanent job in his field of work; in addition, his

hours at Santoni's had been drastically cut. He attended the interview and attempted to get back in time but did not get back until about 1:20 p.m., 20 minutes after his official starting time. As a result, and because of what the employer had told him, he did not report to work that day. The next day he called his supervisor to talk about the situation and was informed that his position had already been filled.

The only other attendance incidents that the claimant experienced was one time when he was an hour late, when his car wouldn't start, and another time when he had to leave early because he was sick.

CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged, but for actions that do not constitute any kind of misconduct, either simple misconduct or gross misconduct. The employer knew when he hired the claimant that he was a student and that he would eventually be seeking work in his regular occupation. The employer even told the claimant that he understood the situation, that he hired many students and that this was no problem. Nevertheless, when the claimant needed time off for these interviews, the employer was not very cooperative. The claimant, nevertheless, attempted to work around this situation. In addition, the claimant's hours were being drastically cut at the time. Based on all these facts, it was perfectly reasonable for the claimant to decide to go on the job interview on September 6, 1984. He made every effort to contact the employer at the earliest possible time and in fact would have been only 20 minutes late if allowed to go back to work. The employer, however, apparently almost immediately replaced the claimant when he did not show up at 1:00 p.m. on that day. Given all these circumstances, the Board does not find the claimant's action to be misconduct. The other two incidents involving lateness and leaving early also do not amount to misconduct, either individually or taken together.

Therefore, the prior decision of the Hearing Examiner and the prior decision of the Board of Appeals will be reversed.

DECISION

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

The previous decision of the Board of Appeals is reversed.


Associate Member


Associate Member


Chairman

HW:W:K

kbm

Date of Hearing: March 28, 1989

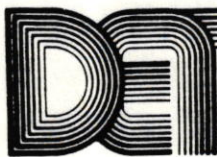
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Robert J. Lynott, Esq.

UNEMPLOYMENT INSURANCE - BEL AIR



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND

HARRY HUGHES
Governor

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

Claimant:

Steven C. Joiner

Date: Mailed: 3/26/85

Appeal No.: 02092-EP

S. S. No.:

Employer:

Santoni's Market, Inc.

L.O. No.: 22

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 OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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.

April 10, 1985

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

APPEARANCES

FOR THE CLAIMANT:

Claimant-Not Present

FOR THE EMPLOYER:

Gregory Carroll,
Personnel Director
Mark Santoni,
Produce Manager
Francis Womack,
III
ADP

FINDINGS OF FACT

The claimant was employed by Santoni's Market, Inc. from April 2, 1984 until September 6, 1984. He performed the services of a part-time Produce Clerk, at \$4.40 per hour, and he usually worked from ten to fifteen hours per week. At the time that the claimant was hired, his hours were considerably greater because he was employed at a store which was just opening and was hired

at the time of the grand opening. He was made aware, however, that he would be a part-time worker and there would be no fixed hours of employment.

During the early months of employment, the claimant's work was considered to be very good. He worked diligently and performed his duties effectively. Later, however, he began to request full-time employment, and when his request was not granted, he began to show his displeasure by making comments and slacking off on his work performance. About a month before the termination of his employment, he commented that if he did not get full-time work, he was not going to do the job. He was late for work on three occasions without explanation and the amount of time late was one-half hour, one hour, one and one-half hours. He failed to notify the employer that he would be late any of these occasions. On each occasion, his supervisor cautioned him that he would have to be at work on time. He received a written warning in mid-June 1984, because of the poor quality of work that he had done. On his last scheduled day for work, the claimant telephoned the employer, stated that he would be two hours late because he had a job interview. He had not informed the employer in advance that he would be out and his services were needed on that occasion. The manager told the claimant that he would have to report as scheduled and if he did not report that he would be discharged. The claimant did not appear, following that conversation except that he picked up his paycheck several days later.

CONCLUSIONS OF LAW

The findings above were based upon the evidence presented at the hearing. The claimant's statement to the Claims Examiner that he was promised thirty hours of work per week was not supported by the evidence and is rejected. Additionally, the claimant's statement to the Claims Examiner that he could not get time off with which to seek full-time employment is rejected also, principally because he was only working ten hours a week which would allow him sufficient time to seek other employment.

Section 6(c) of the Maryland Unemployment Insurance Law, requires the denial of benefits from the week in which an individual is discharged and for not less than four nor more than nine weeks immediately following when the individual is discharged for misconduct. The term "misconduct" means a substantial deviation from the proper standards of conduct. The duration of the disqualification depends upon the seriousness of the misconduct.

Section 6(b) of the Law, requires disqualification until re-employment when an individual is discharged for gross misconduct. The term "gross misconduct" is defined in the Act as a deliberate and willful disregard of standards of behavior which the employer has a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations.

The facts show that the claimant was dissatisfied with not obtaining full-time employment and showed his chagrin by slacking off in work performance, being late, and failing to comply with the employer's work schedule. As a result, he was discharged. His actions constitute a substantial deviation from the proper standards of conduct and they warrant more than the minimum disqualification that was imposed by the Claims Examiner. The determination of the Claims Examiner shall be modified accordingly.

However, the degree of misconduct was not sufficiently severe as to conclude that it falls within the purview of gross misconduct as defined above.

DECISION

The claimant was discharged for 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 September 2, 1984 and for the seven weeks immediately following.

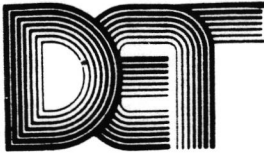
The determination of the Claims Examiner dated February 19, 1985, is modified accordingly.

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.

Date of hearing: 3/11/85
 rc
 (1583)-Robinson
 Copies mailed on 3/26/85 to:

Bernard Streett, rec
 Bernard Streett
 Appeals Referee

Claimant
 Employer
 Unemployment Insurance - Bel Air



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.: 708-BR-85

Date: August 29, 1985

Appeal No.: 02092

S. S. No.:

Claimant: Steven C. Joiner

Employer: Santoni's Market, Inc.

L.O. No.: 22

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §§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 September 28, 1985

— 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 claimant was discharged because of his consistent and continuing pattern of being late, without giving proper notice to the employer, even after numerous verbal warnings. The claimant's repeated latenesses were the result of a conscious decision on his part not to give his best efforts to his employer. This is a series of

37

repeated violations of employment rules proving that he regularly and wantonly disregarded his obligation, and this is gross misconduct within the meaning of §6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 2, 1984 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$900) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kbn

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BEL AIR