

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

William Donald Schaeter, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

Decision No.:	469 -BR-88
Date:	June 7 , 1988
Appeal No.:	8712515
S. S. No.:	
L.O. No.:	1
Appellant:	EMPLOYER

Claimant: Rudolph Williams

Employer: School Employees -Balto. City
c/o Civil Service Comm.
ATTN: Charlie Spinner

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 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

July 7 , 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 an 18-year employee of the City of Baltimore who was also an alcoholic. He was treated and detoxified at numerous hospital inpatient and outpatient programs. On August 11, 1987, the claimant did not appear for work. The Employee Assistance Program called his supervisor and asked that he be given a seven-day leave of absence in order to take care of a medical problem. (This medical problem was his alcoholism, though this was not communicated to his supervisor.) The claimant, however, did not actually attend the program set up by the Employee Assistance Program. He stayed off from work for a total of 24 days before reporting to the employer. The claimant was in need of alcohol treatment at that time, but he did not attend any type of treatment program until after he was fired in September of 1987.

The Board concludes that the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the law. The Board has ruled that where a claimant suffers from the illness of alcoholism, the failure to take advantage of treatment made available by the employer will constitute gross misconduct, if the alcoholism is otherwise resulting in job-related problems. Muller v. Dept. of Public Works (831-BH-83); and Alston v. MTA (126-BH-84).

In this case, of course, the claimant has done more than simply fail to attend scheduled treatment for his alcoholism problem. He has failed to attend treatment at a time when he was specifically granted a leave of absence to attend treatment. In addition, he failed to return to work for at least two weeks thereafter. Under these circumstances, the Board has no doubt but that the claimant's conduct constitutes a deliberate violation of standards of employment his employer has 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 his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning September 13, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Gayle A. Maw
Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Claimant: Rudolph Williams
Date: Mailed January 26, 1988
Appeal No: 8712515
S.S. No.: 218-60-3294
Employer: School Employees - Balto. City
c/o Personnel Technician
L.O.No.: 01
Appellant: Employer

Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law. Whether the Claimant was discharged for misconduct connected with his 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 February 10, 1988
NOTICE APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK

--- APPEARANCES ---

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Charles Spinner
Personnel Technician, IV

FINDINGS OF FACT

The Claimant began working for the employer, an agency of the Baltimore City Government, as an office secretary October 14, 1970. At the time of his separation, effective September 18, 1987, the Claimant was classified as an office assistant II assigned to Frederick Elementary School. He was earning \$661.20 hi-weekly at the time of his separation.

The testimony and evidence revealed that the Claimant is an admitted alcoholic. The Claimant has undergone detoxification treatment and counseling for his alcoholic problem but the various treatments that he has undergone have shown no effective results.

The testimony and evidence also reveal that the Claimant was discharged from his employment for violation of the Civil Service Commission rule #56 and failure to execute his duties and responsibilities. In particular, the Claimant beginning August 24, 1987 was absent for three consecutive days without notifying the school principal and his failure to directly communicate with the principal, Mrs. Ruth P. Brown. It also appears that the Claimant failed to follow through with proper grievance procedures that were available to him.

It should be noted that the Claimant failed to follow through with assistance offered him under the employee assistance program which was available to him.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the Claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law is supported by the testimony of the Claimant and the employer and the evidence. The Hearing Examiner cannot conclude, as argued by the employer, that the Claimant conduct falls within the definition of gross misconduct. The reason for this being the fact that alcoholism is an illness like any other illness. If it weren't for the illness factor, the Claimant's separation would clearly fall within the definition of gross misconduct. It is for these reasons that the determination of the Claims Examiner shall 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. Benefits are denied for the week beginning September 13, 1987 and the nine weeks immediately following. The determination of the Claims Examiner is affirmed. The employer's protest is denied.

Hearing Examiner

Date of Hearing: January 4, 1988

Cassette: 0021 & 0022

Specialist ID: 01038

Copies Mailed on January 26, 1988 to:

Claimant

Employer

Unemployment Insurance - Baltimore (MABS)