



Maryland

Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	487 -BR-89
	Date:	June 8, 1989
Claimant: Valinda Ishola	Appeal No.:	8903585
	S. S. No.:	
Employer: AMI Doctors of Prince George's County.		43
	Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) 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 July 8, 1989

— 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 and concludes that the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the law.

This is not a case of an employee's inability or incompetence to perform her job, nor is it a case of an isolated instance of misconduct, as concluded by the Hearing Examiner. The credible and for the most part unrebutted testimony of the employer's witness is that the claimant was repeatedly warned for refusing to perform her assignments, many of which had a direct effect on patients, and for excessive absenteeism. Even giving the claimant the benefit of the doubt and finding that most of her absences were due to illness, the Board concludes that her blatant and repeated refusal to do her job constitutes a series of repeated violations of employment rules proving that she regularly and wantonly disregarded her obligations and is therefore gross misconduct.

The Board is not impressed with the claimant's testimony that all her problems were due to retaliation of her supervisor for having gone "over his head" in seeking approval of leave. The Board notes that more than one supervisor found fault with the claimant's job performance.

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. She is disqualified from receiving benefits from the week beginning January 8, 1989 and until she becomes reemployed, earns at least ten times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

H:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

 **Maryland**
Department of Economic &
Employment Development

— DECISION —

Claimant: Valinda Ishola
Date: Mailed: April 7, 1989
Appeal No.: 8902384
S. S. No.:

Employer: Ami-Sub Of Prince George's County
L.O. No.: 43
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 4/24/89

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER

Valinda Ishola - Present

Odette Camarada
Benefits Coordinator

FINDINGS OF FACT

The claimant was employed as a patient care technician. She was terminated on January 9, 1989 for a number of reasons including absenteeism and poor work performance. The claimant was counseled by the employer on several occasions and was eventually terminated on January 9, 1989.

The claimant had requested leave during the holidays. When the claimant's supervisor refused, she went over his head and was given the leave by the institution administrator. Most of the claimant's previous absenteeism had been the result of a kidney infection. She had furnished doctor's excuses for the these absences. When the claimant returned from her vacation, she was terminated by her employer.

She is still unemployed.

CONCLUSIONS OF LAW


It has been held that dissatisfaction with an employee's work on the part of the employer, mere inefficiency, incapacity, or ordinary negligence on the part of the employee in isolated instances does not constitute misconduct within the meaning of Section 6(c). (See Chambers v. J.O. Mancini, Inc., 408-BH-84, Albaugh v. Good Samaritan Hospital, 186-BH-83, and Ellis v. Lana Fab Corp., 497-BH-85).

Here, the employer has failed to meet its burden of proving that the claimant's acts amounted to misconduct, within the meaning of Section 6(c) of the Law. Therefore, the determination of the Claims Examiner allowing the claimant benefits will be affirmed.

DECISION

The claimant was separated from her employment, but not for any acts demonstrating gross misconduct or misconduct within the meaning of Section 6(b) or 6(c) of the Law. Benefits are allowed, if the claimant is otherwise eligible under the Law.

The determination of the Claims Examiner is affirmed.


Seth Clark
Hearing Examiner

Date of hearing: 3/27/89
kac/Specialist ID: 43723/2413
Copies mailed on April 7, 1989 to:

- Claimant
- Employer
- Unemployment insurance - Wheaton (MABS)