

# Maryland

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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. Warrick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

Decision No.: 500 -BH-88  
Date: June 17, 1988  
Claimant: Roy Washington Appeal No.: 8712240  
S. S. No.:  
Employer: Direct Marketing Associates L. O. No.: 2  
ATTN: James Bannon, Pers. Mgr. Appellant: EMPLOYER  
1415 Russell St.  
Baltimore, MD 21230  
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.

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**— 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 17, 1988

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**— APPEARANCES —**

FOR THE CLAIMANT:

Roy Washington - Claimant  
Sarah Moreland - Legal Aid Bureau, Inc.

FOR THE EMPLOYER:

James Bannon -  
Personnel Mgr.  
Denise Taylor -  
Machine Operator

## EVALUATION OF THE 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 Employment and Training's documents in the appeal file.

Both the claimant and the co-worker with whom he was involved in the altercation testified at the hearing before the Board of Appeals. There was a major disagreement in the testimony of both parties as to the behavior that led up to the altercation and to what extent the claimant physically touched his co-worker, Denise Taylor. Based on all the evidence in the case and the testimony of these two witnesses, the Board found the claimant's testimony to be the more credible.

Although the Board is aware of and has admitted into evidence affidavits by two alleged witnesses, the Board has given those affidavits less weight than it has given to the live testimony.

## FINDINGS OF FACT

The claimant was employed with Direct Marketing Associates as a bag puller from approximately May of 1984 until he was discharged on or about October 27, 1987. The claimant was terminated because he engaged in physical horseplay with a co-worker.

Part of the claimant's job was to take down materials and put them on the tables of other workers. In the course of performing their work, both the claimant, co-worker Denise Taylor, and other co-workers frequently engaged in joking, name calling and general horseplay. Although this behavior was not officially tolerated by the employer, it did occur from time to time on a regular basis. On the day in question, October 27, 1987, the claimant and Denise Taylor engaged in such behavior. Although it started out playful and joking, somehow it got out of hand. Denise Taylor pushed the claimant and he pushed Denise Taylor in order to move her out of the way and go on to another table. Ms. Taylor became extremely upset, ran out of the room and went to complain to management. As a result, Ms. Taylor was suspended but brought back to work and the claimant, Mr. Washington, was discharged. The Board does not find as a fact that the claimant was choking Ms. Taylor.



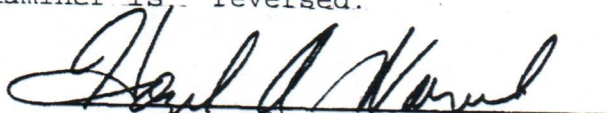
CONCLUSIONS OF LAW

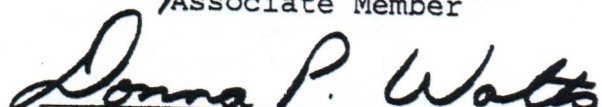
The Board concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the Law. It is obvious from all the evidence that a certain amount of horseplay and joking was regularly carried on by the employees, although not officially tolerated by the employer. On the day in question it got out of hand but Mr. Washington did not intend to hurt Ms. Taylor, who was equally to blame. Therefore, the Board does not find that the claimant's behavior rose to the level of gross misconduct connected with his work within the meaning of Section 6(b) of the law. However, the Board does find that his actions were misconduct, connected with the work within the meaning of Section 6(c) of the law.

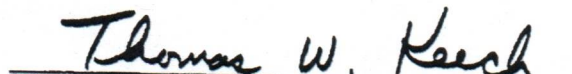
DECISION

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 the week beginning October 25, 1987 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Associate Member

  
Chairman

H:D:K  
kmb

DATE OF HEARING: May 24, 1988  
COPIES MAILED TO:  
CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.  
ATTN: Sarah Moreland  
714 E. Pratt St., 7th Floor  
Baltimore, MD 21202

UNEMPLOYMENT INSURANCE - GLEN BURNIE

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

STATE OF MARYLAND  
William Donald Schafer  
Governor

--- DECISION ---

Date: Mailed January 14, 1988

Claimant: Roy Washington

Appeal No.: 8712240

S.S. No.:

Employer: Direct Marketing Associates  
1415 Russell Street  
Baltimore, MD 21230

L.O. No.: 02

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work under Section 6 (b) of the Law.

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--- 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

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

January 29, 1988

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

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-- APPEARANCES --

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present - represented by Sarah  
Moreland, Legal Aid Bureau,  
Incorporated

Represented by James  
Bannon, Personnel  
Manager

FINDINGS OF FACT

The claimant had been employed by Direct Marketing Associates from May, 1984 until October 27, 1987. He was employed as a bag puller.

The claimant was terminated from employment on October 27, 1987, because the employer concluded that the claimant was fighting with a co-worker and had put his hand around the co-worker's neck. The Hearing Examiner finds as a fact that the claimant did not put his hand around the co-worker's neck.



On October 26, 1987, the co-worker began to use abusive language when speaking to the claimant and pushed the claimant twice; the claimant, in a defensive posture, pushed the co-worker away from him, The claimant did not initiate a fight with the co-worker on October 26, 1987.

#### CONCLUSIONS OF LAW

The term "gross misconduct" means conduct as a deliberate and willful disregard of standards of behavior which an employer has a right to expect, showing a gross indifference to the employer's interest.

In issue of gross misconduct connected with the work under Section 6 (b) of the Law, the burden is upon the employer to show by a preponderance of the evidence that the claimant has violated a company rule or policy. The employer did not have a representative to testify as to first-hand knowledge. The employer has failed to meet its burden that the claimant violated a company rule as to constitute gross misconduct in connection with the work within the meaning of Section 6 (b) of the Law. It will be held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6 (b) or 6 (c) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner will be reversed.

#### DECISION

The claimant was discharged, but not for any misconduct connected with the work, within the meaning of Section 6 of the Law. No disqualification is imposed, based on his separation from employment with Direct Marketing Associates. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

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Marvin I. Pazornick  
HEARING EXAMINER..

DATE OF HEARING - 12/15/87  
cd  
7564/Specialist ID/02417

COPIES MAILED ON 1/14/88 TO:

Claimant  
Employer  
Unemployment Insurance - Glen Burnie (MABS)

Legal Aid Bureau, incorporated  
ATTN: Sarah Moreland  
714 East Pratt Street - 7th Floor  
Baltimore, Maryland 21202