



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.: 540-BH-85

Date: July 22, 1985

Claimant: Marv C. Dav

Appeal No.: 07644

S. S. No.:

Employer: Sinai Hospital of Baltimore

L.O. No.: 9

Appellant: CLAIMANT

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 MAYBE 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

August 21, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Mary C. Day - Claimant
Don Benter - Attorney at Law

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 Employment and training documents in the appeal file.

The Board was particularly influenced by the claimant's exhibits B-1 and B-2 submitted at the hearing before the Board of Appeals and most particular B-2, which is the letter from the claimant's psychologist explaining how the drug she was taking at the time she was discharged could have been primarily responsible for the behavior which led directly to her discharge.

FINDINGS OF FACT

The claimant was employed by Sinai Hospital of Baltimore as a secretary from June 1, 1982 until on or about May 23, 1984 when she was notified that she was terminated from her employment. Although the claimant had had some prior problems, particularly regarding her attendance, the claimant was discharged solely on the basis of two related incidents that occurred on May 15 and May 18, 1984.

Prior to her discharge the claimant had developed eye problems and was referred to a doctor who injected her scalp on a weekly basis with certain drugs. These drugs, however, had very strange side effects and began to make the claimant act in a very bizarre fashion. On May 15, 1984 while she was under the influence of these drugs, she had a confrontation with the assistant director of nursing who had asked the claimant to do a rush typing job. The claimant became extremely upset and walked off the job as a result of this request. On May 18, 1984, the claimant was asked to come to a meeting with the assistant director of nursing to discuss the incident of May 15. The director of nursing was also at the meeting. Although the intent of the meeting was only to verbally reprimand the claimant, the claimant, who was still under the influence of these drugs at the time, became loud, and started screaming and shaking her finger at the director of nursing.

On May 23, 1984, the employer decided to discharge the claimant as a result of her behavior on these two days. The Board notes that at that time the claimant's doctor was telling her that the drugs were not causing these side effects. However, the Board is particularly persuaded by the letter from the claimant's psychologist submitted into evidence which indicates that the drugs, in her opinion, were clearly the cause of the claimant's bizarre behavior.

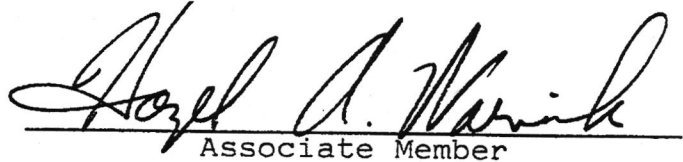
CONCLUSIONS OF LAW

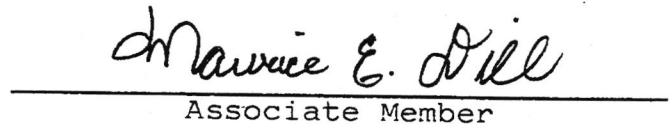
The Board concludes that the claimant was discharged but for reasons that do not constitute either gross misconduct or misconduct within the meaning of either §5(b) or §5(c) of the law. The claimant has presented substantial evidence that the behavior which directly resulted in her discharge was due to circumstances beyond her control, namely the side effects of legally prescribed drugs. Therefore, the Board finds that her actions are not disqualifying under the unemployment insurance law.

DECISION

The claimant was discharged but not for gross misconduct or misconduct, connected with the work, within the meaning of §6(b) or §6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with Sinai Hospital of Baltimore. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Appeals Referee is reversed.


Associate Member


Associate Member


Chairman

W:D:K

kmb

DATE OF HEARING: January 22, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Don Benter, Esquire
Loyola Federal Building

UNEMPLOYMENT INSURANCE - TOWSON



DEPARTMENT OF EMPLOYMENT AND TRAINING

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**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Claimant: Mary C. Dav

Date: Aug. 8, 1984

Appeal No.: 07644-EP

S. S. No.:

Employer: Sinai Hospital of Baltimore

L.O. No.: 09

Appellant: Employer

Whether the claim ant was discharged for misconduct connected with the
Issue: 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.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON August 23, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Ian Berger-
Manager of Employee
Relations;
Medea Marell, Ed. D., R.N.
Vice President of
Director of
Nursing

FINDINGS OF FACT

The claimant worked for the employer from June 1, 1982 until May 23, 1984, as a Secretary, and towards the end of her employment, earned \$5.74 an hour.

The claimant had received warnings about her attendance, specifically about excessive lateness, and she was going to be suspended from work in a meeting of May 8, but after she asked to have that suspension ignored, the employer destroyed the suspension notice. The claimant was not fired for any lateness.

There was a meeting between the claimant and the Assistant Director of Nursing on May 15, 1984. The claimant had asked the Assistant Director of Nursing for her assistance in dealing with some effects that she was having from drugs prescribed by her physician. Then the claimant returned to her desk. She was then asked to do a "rush job" of typing. She threw up her hands in the air and walked to her desk. She was asked by the Assistant Director of Nursing to come to her office, and the claimant began to walk back and forth and the claimant indicated that she would cause a scene if the Assistant Director of Nursing wanted one. The Assistant Director of Nursing believed that the claimant's behavior was inappropriately loud and insubordinate. There was a meeting called for May 18, at which the claimant and the Director of Nursing discussed her behavior of May 15. It was initially intended to simply give the claimant a verbal reprimand. The claimant began speaking in a loud voice, and then screaming. She began shaking her finger at the Director of Nursing.

The claimant admits that at that hearing she was very upset, and that a heated conversation occurred and she was very emotional. She states that she was loud and she was screaming. The claimant was then told to leave for the rest of the day, and that she would be paid for that day, but that she would hear from the employer.

Prior to the events of May 15, 1984, the claimant had experienced nervousness, headaches and other problems of what she considers to be stress in her job. Without notifying the employer, she had under the care of a psychologist. She had notified the employer that she was under the care of an internist, who was giving her various medications and that the medications she felt were causing her to be upset, dozey, crying, jittery, and "hyper," as well as very nervous. On the day that she spoke with the Director of Nursing, she felt the results of the medication she was taking under the care of a physician. She felt the need to defend herself. She was very upset. The claimant then went home at the direction of the employer, and returned on May 23, 1984, but was discharged for

the events of May 18. The sole reason that the claimant was discharged was for violating the company policy by creating disturbances by being loud and argumentative in her conduct with her meeting with her supervisor on-May 18.

On both May 15 and May 18, the claimant had come to work not feeling well, and she had explained this to supervisory personnel. She, nevertheless, performed her duties satisfactory until the events that have been heretofore related occurred.

CONCLUSIONS OF LAW

The evidence reveals that the claimant's conduct both on May 15 and May 18 brought about her discharge from employment. Her conduct was argumentative, loud, angry and inappropriate under the circumstances. While she attributes her conduct either mainly or partially to the fact that she on medication, she was, nevertheless, able to function as a Secretary" on these two work days. She knew what she was doing. She may have been under distress and stress on those days and uncomfortable because of the results of medication she was taking, but this does not excuse her behavior.

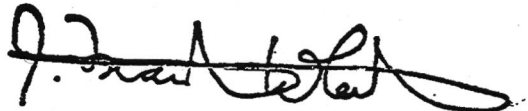
By her own testimony, the claimant indicates she had a heated discussion, was argumentative and upset. Her own behavior brought about her discharge as a result of the events on May 18. The claimant would have not have been discharged and the employer had not contemplated discharge on May 18. Her behavior in the employer's Director of Nurse's office on May 18 was the instrumental force in bringing about her discharge. Her conduct on that date is found to be a deliberate and willful disregard of standards of behavior which an employer has the right to expect, showing a gross indifference to the employer's interest and, hence, is construed to be gross misconduct connected with the work within the meaning of Section 6(b) as a basis for discharge from employment.

The claimant's conduct on the two dates under scrutiny, namely, May 18 and May 15, clearly shows that she was in control of her faculties and while under the influence of drugs, nevertheless, was able to function. She, therefore, had the option of either acting as she did, or remaining in a more demure composure. She did not exercise this option, and her conduct brought about her discharge and, therefore, the Appeals Referee believes that her conduct on these dates constitutes gross misconduct connected with her work, within the meaning of Section 6(b) of the Law.

DECISION

The claimant was discharged for gross misconduct connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits for the week beginning May 20, 1984 and until she becomes reemployed and earns at least ten times her weekly benefit amount (\$1250) and thereafter becomes unemployed through no fault of her own.

The Employer's Protest is sustained.



J. Martin Whitman
APPEALS REFEREE

Date of hearing: July 27, 1984

Cassette: 5644 B, 5643 A & B, 5646 A

hf (P. Safford)

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Claimant
Employer
Unemployment Insurance-Towson