

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

**BOARD OF APPEALS**

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

William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**— DECISION —**

	Decision No.:	547-BH-88
	Date:	June 24, 1988
Claimant:	Appeal No.:	8713162
	S. S. No.:	
Employer:	L. O. No.:	1
	Appellant:	CLAIMANT

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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON July 24, 1988

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Eleanor N. Seledée - Claimant  
Edie DiPaola - Witness

## 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 Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed as a legal secretary with the law firm of Thomas H. McCarty, from approximately July, 1980 until she was discharged on or about October 22, 1987.

During the course of her employment, the claimant for the most part was an exemplary employee. She was seldom absent or late, and was given great responsibility with regard to writing letters, pleadings, and other documents. Such was the confidence that the employer had in her ability, that he would frequently give her something that needed to be responded to and merely tell her to respond. Eventually, his office became computerized and many of the written materials that she drafted were placed on the computer.

Things went along well until the employer hired another legal secretary, a young woman fresh out of school. This other employee was frequently late and absent. Despite this, she was given the receptionist desk, the claimant was moved to another office, and the employer began to criticize the claimant's work performance. The employer also began to make comments to the claimant that his payroll was too high and the claimant felt like he was encouraging her to quit. Nevertheless, she did not quit her job and continued to work there until she was fired in October of 1987. At the time that he fired her, she had been late that morning, but she had a problem with her car and had called the employer and told him she would be late. Nevertheless, when she arrived at work later that day, she was discharged. The employer told her that the whole office had been fired. He also informed one of the employees in the accounting division that he had fired both the claimant and the other newer employee. However, this was not true and, despite the fact that she was frequently late and absent, the new employee continued to work for the employer.

## CONCLUSIONS OF LAW

The Board concludes, based on the very credible testimony of the claimant and her witness, that she was discharged but not for any actions that could possibly be considered misconduct or gross misconduct. The claimant was a faithful employee for

over seven years and was seldom absent or late. Her lateness on the day she was fired, given her past record and given the fact that she had a legitimate problem and called the employer, cannot under any reasonable standards be construed as misconduct. Therefore the decision of the Hearing Examiner will be reversed.

DECISION

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

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Associate Member

  
Chairman

H:D:K

kmb

DATE OF HEARING: June 14, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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

STATE OF MARYLAND  
William Donald Schaefer  
Governor

--- DECISION ---

Date: Mailed February 19, 1988  
Appeal No: 8713162  
S.S. No.:  
Employer: Thomas H. McCarty, et al  
L.O. No.: 01  
Appellant: Claimant  
Issue: Whether the Claimant was discharged for misconduct connected with his work within the meaning of Section 6(c) of the Law.

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--- 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  
March 7, 1988

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

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

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--- APPEARANCES ---

FOR THE CLAIMANT:  
~~Present~~  
Michael Seledee

FOR THE EMPLOYER ~~FOR~~ McCarty

FINDINGS OF FACT

The Claimant was employed by McCarty Law Firm from July 1980 until October 22, 1987. She was earning \$7.75 per hour doing secretarial work at the time of separation from employment. The Claimant was discharged by the employer when she was reported late for work on

October 22, 1987. The employer had been experiencing difficulty with his employees with absenteeism and lateness. The Claimant was aware that he was upset by this situation. She had scheduled her car to be taken in for maintenance on a work day in the morning prior to work. When she arrived at the garage, the garage was closed and her car was not taken promptly. As a result, the Claimant was late for work. The Claimants usual starting time was 8:30. At 9:05, she called her employer to say that she would be in shortly and was told that she was discharged. The Claimant came to the employer's premises anyway and was told again that she was discharged.

The employer had other employees who had chronic absenteeism and lateness problems and did not discharge them.

The other employees did not have the responsibility of opening the office at 8:30 in the morning.

The employer had had to speak to the Claimant about a month prior to her discharge about the problems of getting the office open promptly in the morning. Although the Claimant had denied that she was late, it appears that she was late an average of 5 minutes or 10 minutes every now and then opening the office.

The Claimant when she knew she was going to be late, if she stayed to have her car serviced, did not immediately take her car back and report for work. She had her husband with her. Her husband is an invalid with a heart condition.

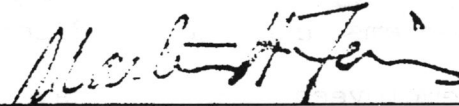
#### CONCLUSION OF LAW

The Claimant was late for work after she had been spoken to by the employer about the importance of opening the office on time. She was late in a rather deliberate fashion in that she was aware that she was due at work at 8:30 and yet she scheduled her automobile for maintenance at a garage prior to that time. Even after she found out that her car could not be taken in time for her to get to work on time, she persisted in having the maintenance done and made herself late for work. She was aware that her employer was upset by the tardiness and absenteeism among his staff and she was also aware that he had spoken to her about getting the office open on time. Yet she went ahead and intentionally made herself late when it was not necessary to do so. Under these circumstances, one might find that the Claimant's actions were gross misconduct however; there are valid mitigating circumstances present in this case which were recognized by the Claims Examiner and, therefore, the determination of the Claims Examiner will not be changed to increase the penalty but will be simply 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. She is disqualified from receiving unemployment insurance benefits for the week beginning October 18, 1987 and for seven weeks immediately thereafter ending on December 12, 1987.

The determination of the Claims Examiner is affirmed.



Martin A. Ferris  
Martin A. Ferris  
Hearing Examiner

Date of Hearing: February 3, 1988

Cassette: 486

Specialist ID: 01067

Copies Mailed on February 19, 1988 to:

Claimant

Employer

Unemployment Insurance - Baltimore (MABS)