

 **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.: 556 -BH-91
Date: May 14, 1991
Claimant: Patsy P. Morten
Appeal No.: 9014812
S. S. No.:
Employer: Lorien Home Health Care Agency L.O.No.: 45
Appellant: EMPLOYER
Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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, 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

June 13, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Patsy Morten, Claimant
David Resnick, Attorney

FOR THE EMPLOYER:

Katherine Chrystal,
R.N.
Louis Grimmel,
Executive Director

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.

The Board of Appeals finds the testimony of the employer's witnesses to be more credible than the claimant's testimony. In addition to their own investigations, the employer contacted the Howard County Office of Aging. It is required by law that any allegations of abuse, of patients in nursing homes, be reported to the agency. The agency visited the nursing home on four occasions and conducted their own investigation of the allegations. The Office of Aging concurred with the employer's decision to suspend the claimant on the basis of her abuse of patients. The Board is not basing their decision in this case on the findings of the Office on Aging. However, these findings do bolster the employer's credibility.

FINDINGS OF FACT

The claimant was employed as a Home Health Aide for the Lorien Home Health Care Agency from 1986 until September 24, 1990. The claimant worked at the senior citizen retirement community.

The claimant was suspended from the Lorien Home Health Care Agency, Inc. because she was abusive to patients. The employer received complaints from co-workers, patients, and family members of patients regarding the claimant's treatment of patients at the nursing home. These complaints included verbal abuse, aggressive treatment, leaving a patient in a wheelchair for long periods of time, failing to feed a patient, grabbing a walker away from a patient, and threatening to shut the door on a patient. The Board finds as a fact that the claimant committed the acts of which she was accused.

CONCLUSIONS OF LAW

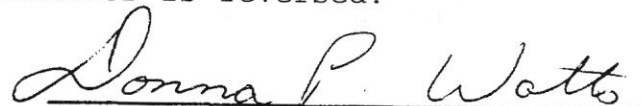
Article 95A, Section 6(b) provides for disqualification from benefits where an employee is discharged for actions that constitute (1) a deliberate and willful disregard of standards of behavior which the employer has the right to expect, or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer.

The claimant was suspended by the Lorien Home Health Care Agency, Inc. due to her continuing pattern of abusive behavior towards patients at the senior citizens retirement community. These acts of verbal abuse, threatening patients and mistreatment of patients amount to gross misconduct as defined in Section 6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was suspended 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 September 23, 1990 until she becomes re-employed, earns ten times her weekly benefit amount (\$2,150), and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Associate Member



Chairman

DW:K
kbm

Date of Hearing: February 26, 1991
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Date: Mailed: 12/12/90
Appeal No.: 9014812
S. S. No.:
Claimant: Patsy P. Morten
Employer: Home Health Care Agency, Inc. L.O. No.: 45
Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.
Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c) (3) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 December 27, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Katherine Chrystal,
Nursing
Administrator;
Henry Franklin,
Personnel Director/
Observer

FINDINGS OF FACT

A Notice of Benefit Determination allowing the claimant Maryland unemployment insurance benefits because she was suspended but not for gross misconduct or misconduct, connected with the work, within the meaning of Sections 6(b) or 6(c) of the

Law was mailed to the claimant and the employer at their addresses of record. The Benefit Determination contained a statement that the last day for filing an appeal was October 31, 1990. Lorien Home Health Care Agency, Incorporated sent a letter by Federal Express on October 31, 1990.

The claimant had been employed by the Lorien Home Health Care Agency, Incorporated from 1986 to September 24, 1990 as a Home Health aide. The claimant worked at a Senior Citizen Retirement Community.

The claimant was suspended from the Lorien Home Health Care Agency, Incorporated because the employer concluded that the claimant had abused the patients. There had been complaints by co-workers that the claimant screamed at and abused the patients. One patient brought a written complaint that the claimant's attitude was aggressive and her manner was abrasive. A resident's son at the Senior Citizen Retirement Community complained that the claimant verbally abused and shouted at his parents. Furthermore, the Lorien Home Health Care Agency, Incorporated concluded that the claimant left a patient in a wheelchair for long periods of time, threatened to shut the door on a patient, grabbed a walker from a patient, and the claimant failed to feed a patient on August 31, 1990. The claimant concluded that she did not leave a patient in a wheelchair for long periods of time, the claimant did not threaten to shut the door on a patient, the claimant did not grab a walker from a patient, and did feed a patient on August 31, 1990. The claimant concluded that she did not scream, verbally abuse, or abuse any of the patients at the Lorien Home Health Care Agency, Incorporated.

Lorien Home Health Care Agency, Incorporated did not have any witnesses testify as to first hand knowledge that the claimant abused any of the patients at the Senior Citizen Retirement Community Center. The Hearing Examiner finds as a fact that the claimant did not verbally abuse, physically abuse, or shout at the patients at the Senior Citizen Retirement Community Center.

CONCLUSIONS OF LAW

It will be held that the employer filed a timely appeal, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the

Statute.

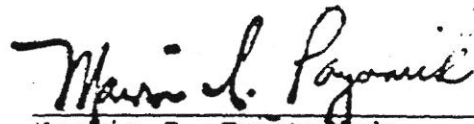
The claimant was suspended by Lorien Home Health Care Agency, Incorporated because the employer concluded that the claimant had abused patients at the Senior Citizen Retirement Community. Since the employer did not have any witnesses testify as to first hand knowledge that the claimant abused any of the patients at the Senior Citizen Retirement Community Center, it will be held that the claimant was suspended but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 6(c) of the Law.

DECISION

It is held that the employer filed a timely appeal, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant was suspended, 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. No disqualification is imposed based on her separation from her employment with Lorien Home Health Care Agency, Incorporated. The claimant may contact her local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.



Marvin I. Pazornick
Hearing Examiner

Date of Hearing: 11/29/90
alma/Specialist ID: 45538
Cassette No: 9598 A & B, 9599 A
Copies mailed on 12/12/90 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)