

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT



BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

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

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 562-3R-87

Date: August 31, 1987

Claimant: Raymond Miller

Appeal No.: 8705174

S. S. No:

Employer: Computer Sciences Corporation
c/o The Gibbens Co., Inc.
ATTN: Shirley Mores

L.O.No.: 43

Appellant EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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.

September 30, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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.

The Board adopts the findings of fact of the Hearing Examiner. The Board also finds as a fact that the claimant, in the meeting with Mr. Rodriguez and Mr. Rodriguez's supervisor, when asked specifically if he was threatening Mr. Rodriguez, responded repeatedly with words which could be reasonably interpreted only as a threat of physical violence to Mr. Rodriguez.

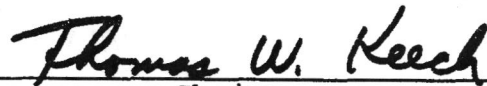
Although the claimant's animosity toward Mr. Rodriguez may have been triggered by a misunderstanding, the meeting was called specifically to clear this matter up. The claimant's initiation of threats at this meeting was a deliberate violation of standards of behavior the employer had a right to expect, showing a gross indifference to the employer's interest. This is gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

The Hearing Examiner based his findings of no misconduct on the fact that the claimant had mistakenly thought the co-employee had threatened him and the finding that the claimant was not given an opportunity to totally explain his side of the story. Neither of these factors is relevant here. The meeting was called in order to clear up any misunderstanding. Instead of taking advantage of this opportunity, the claimant physically threatened Mr. Rodriguez at the meeting. Instead of using the opportunity to explain, the claimant responded with threats. By this action, the claimant lost his right to complain that he was not given sufficient time to explain his side of the story. Whether the claimant was later given an opportunity to fully explain these threats is irrelevant, since a finding of fact has been made that these threats were spoken.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning February 15, 1987 and until he becomes reemployed, earns ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman



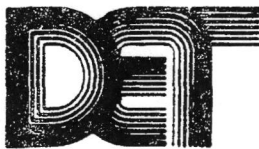
Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
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STATE OF MARYLAND
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BOARD OF APPEALS

THOMAS W KEECH
Chairman

HAZEL A WARNICK

Associate Members

SEVERN E LANIER
Appeals Counsel

MARK R WOLF
Chief Hearing Examiner

CORRECTED

DECISION

7/6/87

Date: Mailed:

8705174-EP

Claimant: Raymond B. Miller

Appeal No.:

)

S. S. No:

Employer: Computer Sciences Corporation
c/o The Gibbens Company, Inc.

NO. NO: 43

Employer

Appellant:

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 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 7/21/87

APPEARANCES

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Shirley Morea,
The Gibbens Co.
Pat Walker,
Division EERO
Manager
Mark Schaffman,
Sr. Computer
Scientist
Ed Rodriguez,
Services Technician
Assistant
Sushil Khalka,
Sr. Computer
Scientist

FINDINGS OF FACT

The claimant was employed by Computer Sciences Corporation from September 15, 1986 until February 18, 1987. This was a full-time job which paid the claimant \$33,000 per year.

The claimant was terminated under employer's policy for the harming or threatening of harm to the person or property of another employee. This was done after it was determined that the claimant had threatened another employee, Ed Rodriguez.

On February 11, 1987, Mr. Rodriguez, was talking to a person that he had continued contact with. Because of the continuing problems that the two encountered, Mr. Rodriguez said to this person "You are driving me crazy, so day I am going to kill you." While this person knew that Mr. Rodriguez was joking, the claimant was walking by them and was in eye contact with Mr. Rodriguez when he made that statement. The two had been introduced previously, but had no job contact. Later, Mr. Rodriguez observed that the claimant made an obscene gesture at him. At a conference in Mr. Rodriguez's supervisor's office a short time later, the claimant indicated that he might lose his temper and let him have it. When asked if this was a threat, the claimant replied that anytime or anyplace regardless if they were at the IBM facility or not.

The claimant's supervisor later talked to Mr. Rodriguez and realized that the situation was serious. He did not talk to the claimant and turned the matter over to his immediate supervisor. As a result, the claimant was terminated without really getting a chance to explain his side of the situation. The termination was accomplished through company procedures with the necessary parties making the decision.

CONCLUSIONS OF LAW

The claimant was terminated for a breach of a company policy involving the threat of fellow worker or to the property of fellow workers. However, based upon the facts as outlined above, the undersigned Hearing Examiner does not believe that the claimant's conduct amounts to misconduct within the meaning of Section 6(c) of the Law, nor gross misconduct within the meaning of Section 6(b) of the Law. This is because the claimant thought the co-employee had threatened him before the claimant responded with his own threat. For what ever the reason, the claimant did not realize that the co-employee was talking to some one else and not to the claimant. The employer, although an investigation was conducted, did not really let the claimant explain totally his

side of the story. While the claimant's conduct under the circumstances might be considered a violation of company policy which resulted in his termination, it is not considered by the undersigned to be misconduct, within the meaning of Section 6(c) of the Law. Therefore, the determination of the Claims 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 his separation from his employment with Computer Sciences Corporation. The claimant may contact his local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

Seth Clark
Hearing Examiner

Date of hearing: 6/12/87
rc

Claimant
Employment
Unemployment Insurance - Wheaton - MABS