



*William Donald Schaefer, Governor
Mark L. Wasserman, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032*

*Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member*

— DECISION —

Decision No.:	563-BR-92
Date:	March 24, 1992
Claimant: Ernest K. Harris	Appeal No.: 9122389
	S. S. No.:
Employer: B P S Guard Services, Inc. c/o R. E. Barrington, Inc.	L. O. No.: 2
	Appellant: CLAIMANT
Issue:	Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article.

— 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

April 23, 1992

— 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 claimant was a security guard. He had worked for his employer's client for five years prior to his discharge. The claimant had a good record and had had no disciplinary problems in this time. He was discharged because he was found asleep at his guard post. The claimant was aware that this was a serious violation for a security guard.

At the time, the employer was shorthanded, and the claimant had worked about 36 hours in the past few days. The claimant's job was to fill in for other guards. He was not a regular full-time employee, but this was his primary source of income at the time. The claimant did not intentionally fall asleep. He had been working since midnight, and was found asleep at about 5:00 a.m.

The Hearing Examiner found this conduct to be gross misconduct. Although the general rule cited by the Hearing Examiner is correct, and a security guard's falling asleep is normally regarded as gross misconduct, the Board has recognized that mitigating factors do arise in exceptional circumstances.

In Brohawn v. Imperial Marine, Inc. (483-BR-85), a night watchman was found asleep at the job. The Board found that this was a case of simple misconduct only. The claimant in that case worked seven nights a week, and he had also obtained a second, part-time job because his primary employer had given him notice that his hours were going to be cut.

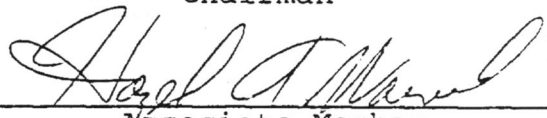
This case also involves the unintentional falling asleep of an employee. The claimant had recently worked an unusually high number of hours at his employer's request. While the responsibility for staying awake is the claimant's, and his failure to do so is misconduct, the Board concludes that his act lacks the deliberateness, or the gross indifference to the employer's interest, which must be shown before his conduct could be define as gross misconduct. The Board will therefore find that the claimant was discharged for simple misconduct, and a lesser penalty will be imposed.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning October 27, 1991 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:H

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - GLEN BURNIE

 **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

— DECISION —

	Date:	Mailed:	01/24/92
Claimant:	Ernest K. Harris	Appeal No.:	9122389
		S. S. No.:	
Employer:	B P S Guard Services, Inc. c/o R. E. Barrington, Inc.	L.O. No.:	02
	Appellant:		Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.

— 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 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.

February 10, 1992

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:
Claimant - Present

FOR THE EMPLOYER:
Represented by:
Ann Edwards,
Personnel Manager

FINDINGS OF FACT

The claimant was employed between February 6, 1988 and November 12, 1991 as a security officer earning \$6.55 per hour. The claimant was separated through discharge.

On November 2, 1991, the claimant was seen sleeping on the job. Sleeping on the job is against company policy and grounds for immediate termination. As a result of the claimant's behavior, he was immediately terminated in accordance with company policy.

All employees are issued manual which outlines company rules and regulations at the time that they are hired. All employees undergo orientation and the record reflects that the claimant signed for this employee manual.

There were no other disciplinary problems noted in the claimant's employment record. He admitted to being asleep on the job on November 2, 1991.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 100 provides that an individual shall be disqualified from benefits where he/she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has a right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

In the instant case, the claimant was found asleep on the job which jeopardized the safety of the employer's premises, and the Board has held that an single incident of this nature constitutes gross misconduct. Allen v. City of Baltimore, 2243-BH-83. See also, Lewis v. S. M. C. Corporation, 84-BR-82.

DECISION

It is held that the claimant was discharged for gross misconduct, connected with the work, within the meaning of the MD Code, Labor and Employment Article, Title 8, Section 1002. He is disqualified from receiving benefits from the week beginning October 27, 1991, and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,230) in covered employment and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

Katherine A. Holmes ec
Katherine A. Holmes
Hearing Examiner

Date of Hearing: 1/9/92
cc/Specialist ID: 02418
Cassette No: None
Copies mailed on 01/24/92 to:

Claimant
Employer
Unemployment Insurance - Glen Burnie (MABS)