



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.:	57-BH-90	
	Date:	January 19, 1990	
Claimant:	Robert Angel	Appeal No.:	8909038
		S. S. No.:	
Employer:	Service Merchandise Co., Inc. c/o Scott Haden, District	L.O.NO.:	8
		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 MAYBE 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.

February 18, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Scott Haden, Dist.
Human Resources Mgr.

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

The Board notes that the claimant's original statement to the Claims Examiner, contained in the record of this case, contradicts his own testimony before the Hearing Examiner with regard to whether the merchandise in question was purchased by himself or by a friend. His original statement before the Claims Examiner, however, confirms the testimony of the employer, presented at the hearing before the Board. Therefore, the Board gives more credibility to the employer's testimony and does not find credible the claimant's testimony before the Hearing Examiner.

FINDINGS OF FACT

The claimant was employed as a floor manager by the Service Merchandise Company, Inc. from February 11, 1989 until he was discharged on or about June 29, 1989.

As an employee, the claimant was permitted to purchase merchandise from the employer at the normal employee discount (10% on most merchandise and 30% on jewelry) or, if there was a sale in progress, at the sale price, whichever was less. As a floor manager, the claimant had authority to lower the price of merchandise even if it was not on sale at that moment, but only for customers. He did not have the authority to lower the price of the merchandise for himself and needed special approval from his supervisor to do so.

On or about June 24, 1989, the claimant purchased merchandise for himself from the employer and discounted the price of the merchandise below the regular 10% employee discount, even though it was not on sale at that time. He did not have any supervisor's approval to do this. When the employer discovered this and questioned the claimant about it, he admitted discounting the merchandise himself. His only explanation was that he would have done it for a customer as well. However, he was aware of the company policy that strictly forbade such an action and admitted that he knew the policy. He was subsequently discharged.

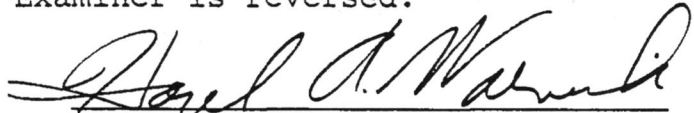
CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for gross misconduct connected with his work, within the meaning of Section 6(b) of the law. The claimant knew what the employer's policy was and flagrantly violated that policy for his own personal gain. This was a deliberate and willful disregard of standards of behavior, which his employer had a right to expect, showing a gross indifference to the employer's interest; and it therefore meets the definition of gross misconduct under Section 6(b) of the Maryland Unemployment Insurance Law. Although this was only one incident, the Board concludes that it was such a flagrant and deliberate violation of rules that it amounts to gross misconduct.

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 June 25, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member


Chairman

HW:W:K

kbm

Date of Hearing: December 19, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Service Merchandise Co., Inc.
c/o Compensation Tax Management

UNEMPLOYMENT INSURANCE - ANNAPOLIS

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor

J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

= DECISION -

Date: Mailed: 9/29/89
Claimant: Robert G. Angel Decision No.: 8909038
S.S. No.:
Employer: Service Merchandise Co., Inc. Lo.No.: 008
c/o Compensation Tax Mgmt. Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Law. Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

- 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 **October 16, 1989**

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

Not Represented

FINDINGS OF FACT

The claimant was employed as a floor manager by the Service Merchandise Company, on February 11, 1989. At the time of his separation from employment on June 29, 1989, the claimant earned \$40,000.00 per year, plus bonuses.

The claimant was discharged on June 29, 1989, for allegedly improperly purchasing merchandise on a discount, on June 24, 1989. The claimant, in fact, did not purchase merchandise on June 24, 1989. The merchandise was purchased by a friend of the claimant.

The claimant wrote the order slip at the sale price because the merchandise had been on sale two weeks before the purchase date, but had not come into the store until a week later. Under the employer's policy, a customer is given ten days to purchase the merchandise on sale if it is not in on the sales date. Therefore, the customer was properly allowed to pay the sales price. The sale was approved by the assistant jewelry manager. The assistant jewelry manager was authorized to approve or disapprove discounts.

A hearing was scheduled in this matter on August 10, 1989. The claimant did not attend the hearing, because he had a job interview Dallas, Texas on that date.

CONCLUSIONS OF 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 term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113).

The claimant's conduct in writing up the order slip for a friend's purchase at the sale price, after the sale had ended does not constitute either gross misconduct or misconduct under the Law, because the employer's policy allows the customer to purchase merchandise at the sale price, when it is not in the store while the sale is in progress, and the customer purchases the merchandise within ten days of the sale.

COMAR 24.02.06.02(N) provides that a dismissed case may be reopened for good cause. The claimant has demonstrated good cause for reopening this dismissed case.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct, within the meaning of Section 6(b) or 6(c) of the Law.

Benefits are allowed.

The Claims Examiner's determination is reversed.

There is good cause for reopening this dismissed case within the meaning of COMAR 24.02.06.02(N).


/ Sarah Moreland
Hearing Examiner *Beh*

Date of Hearing: 9/19/89

rch/Specialist ID: 08005

Cassette Number: 9041

Copies mailed on 9/27/89 to:

Claimant

Employer

Unemployment Insurance - Annapolis (MABS)