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.: 620-BR-91

Date: May 30, 1991

Claimant: Michael Saylor

Appeal No.: 9017172

S. S. No.:

Employer: White-Rose Paper Co., Inc.
ATTN: Robert Barber

L O. No.: 2

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.

THE PERIOD FOR FILING AN APPEAL EXPIRES June 29, 1991

—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 missed an enormous amount of work time due to an injury. He was on disability leave for this time, and this was not counted against him. In addition to this disability time, the claimant missed 8 and 1/2 days sick time in 1988, 18 and 1/2 days of sick time in 1989 and 15 and 1/2 days of sick time in 1990. Two of the days in 1988 were missed without excuse, 12 of the days in 1989 were missed without excuse and 7 of the days in 1990 were without excuse. The claimant was verbally warned twice in 1988 and three times in 1989. He was given two written warnings in 1990 near the time of his dismissal. His warnings were for repeatedly failing to call in when he would be absent. Company policy required him to call in two hours before the shift began. The claimant was also required to bring in a doctor's note for his absences, but often failed to do so.

The claimant had a serious injury (a broken hip resulting from a motorcycle accident) and medical problems. The claimant testified that he called in "quite a few" times, but sometimes had trouble getting the message through. The Board finds as a fact that he called in sometimes, but that he often didn't call in, even after being warned.

This is not a case concerning the claimant's medical condition. The employer, for example, did not hold it against the claimant that he missed 79 days due to disability in 1989, and 67 days in 1988. It is obvious that the claimant had a serious problem with his hip, and it is quite possible that other medical problems caused him to miss additional time.

The Board has ruled in the past that, where an employee has missed a large number of work days, even if for a good reason, that employee has a heightened duty not to miss any more work due to unexcused reasons, and also to strictly observe the employer's notice requirements with respect to all absences. Birmingham v. U.S. Schwab Company (333-sE-86). The claimant in this case missed an enormous amount of time due to his disability and illness. This was excused, and it is not misconduct. But the claimant also missed a large amount of additional time; and for many of these absences he failed to provide his employer medical documentation or call in according to company procedures. He was told several times to do this, but he basically ignored these warnings.

The claimant's repeated failure to call in or provide medical notes for his absences, over a long period of time, after warnings, is a series of repeated violations of work rules, showing a willful and wanton disregard of his employer's

interests. This is gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

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 17, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1,940), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:HW
kbm
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

— D E C I S I O N —

Date: Mailed: 2/25/91

Claimant: Michael G. Saylor

Appeal No.: 9017172

S. S. No.:

Employer: White Rose Paper Co., Inc.

L.O. No.: 002

Appelant: Employer

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 TO PETITION FOR REVIEW –

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAYBE 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 March 12, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Robert Barber,
Vice President
Joseph Neel,
Manager

FINDINGS OF FACT

The claimant was employed by White Rose Paper Co., Inc., from February 2, 1988 until June 15, 1990 and was a paper cutter, earning $8.50 an hour. He was discharged by the employer for excessive absenteeism.

In June 1988, the claimant sustained a broken hip in a motor cycle accident, this had nothing to do with the employer's business. He was out for sixty seven days on disability and sick on eight and a half days. He presented two excuses for absenteeism.

In 1989, the claimant was out for seventy nine days with his hip injury and eight and a half days for sickness, he was out six and a half days without excuses.

In 1990, the claimant was absent for fifteen and one half days, he had a bleeding ulcer.

The claimant also sustained injury on the job when a pallet fell on him and this in affect re-injuried his hip.

The claimant, during 1989 he had a few write ups and warnings for not calling in, not working overtime, not being present because he had to take a child to the hospital, these were due to medical and family problems.

The claimant did call on several occasions, however, the calls did not get through to the changes in management at the time that he was suppose to call and report any problems.

Since the beginning of 1990 there was no write ups on the claimant for failing to call in or being out for family problems.

The claimant did present medical verifications both to the employer, although this was late, and the Agency, concerning his major medical problems.

CONCUSSIONS OF LAW

In the case of Knight v. Maryland Manor Convalescent Center, 333-BR-83, the Board held that claimant's absences which were always with notice and were almost all excused due to claimant's illness, the claimant's on the job injury or claimant's mother's illness do not constitute misconduct.

In this case the claimant had a very difficult time due to injuries and illness. He substantiated practically all of his missed time and there is certainly no intent on the part of the claimant to take time off when he was not ill. Therefore, these absences cannot not be considered to be for misconduct connected with the work.

The claimant apparently failed to follow the employer's call in procedure exactly during 1989 and was late in presenting some medical evidence. This is found the be misconduct connected with the work, within the provision of Section 6(c) of the Law and the determination of the Claims Examiner will be affirmed.

The claimant's overall record does not warrant a finding of a disc-barge for gross misconduct connected within the provision of Section 6(b) of the Law.

DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning June 17, 1990 and the nine week immediately following.

The determination-of the Claims Examiner is affirmed.

John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: February 13, 1991
lr/Specialist ID: 02418
Cassette No: NONE
Copies mailed on February 25, 1991 to:

Claimant
Employer
Unemployment Insurance - Glen Burnie (MARS)