DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

-DECISION-

DECISION NO.: 625-BR-84

DATE: July 6, 1984

CLAIMANT: Ronald P. Zimmerman , Jr.

APPEAL NO.: 02572

S.S.NO.:

EMPLOYER Goucher College

LO. NO.: 22

APPELLANT: EMPLOYER

ISSUE Whether the Claimant was discharged for misconduct, connected with the work, within the meaning of § 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT August 5, 1984

-APPEARANCE-

FOR THE CLAIMANT

FOR THE EMPLOYER

REVIEIW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee.

On the Claimant's last day of work, the Claimant was called in to discuss some misconduct he had on the job. The Claimant then replied that this was the kind of incident that made people go home and get their shotguns. The Claimant was then fired for the previous misconduct (horseplay with a truck) and for making this threat to a supervisor.

The Appeals Referee accepted the Claimant's argument that he was simply making a general statement about shotguns and made no direct threat to his supervisor. This argument is implausible, and acceptance of this argument by the Appeals Referee was erroneous.

The Claimant and his supervisor were not having an academic discussion about shotguns. The Claimant clearly made the statement to produce fear in the supervisor's mind. This is a threat, whether the words were indirect or not. Considering the words stated by the Claimant and the context in which they were stated, the supervisor's fear was reasonable, as was the decision to fire the Claimant.

This threat was a deliberate violation of standards the employer had a right to expect, showing a gross disregard for his employer's interest. This is gross misconduct within the meaning of § 6(b) of the Law.

DECISION

The Claimant was discharged for gross misconduct, connected with the work, within the meaning of § 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning January 8, 1984, and until he becomes re-employed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

Thomas W Keech

Hazel A. Warnick
Associate Member

K:W
dp

COPIES MAILED TO:

CLAIMANT

EMPLOYER

The Gibbens Company, Inc.

UNEMPLOYMENT INSURANCE - BEL AIR

STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5040

BOARD OF APPEALS
THOMAS W. KEECH
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MAURICE E. DILL
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Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Administrative
Hearings Examiner

-DECISION -

DATE: April 3, 1984

CLAIMANT: Ronald Paul Zimmerman , Jr.

APPEAL NO.: 02572-EP

S. S. NO.:

EMPLOYER: Goucher College

L. O. NO.: 22

APPELLANT: 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 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 April 18, 1984

-APPEARANCES -

FOR THE CLAIMANT:
Present

FOR THE EMPLOYER:
Represented by Graham Carlton, Supervisor; Edward Schultz, Dispatching Supervisor; and Edward McNulty, The Gibbens Company

FINDINGS OF FACT

The claimant worked as a groundskeeper for about a year at Goucher College, until he was discharged on January 13, 1984. His last rate of pay was $4.79 an hour.

In July, 1983, the claimant received a written reprimand about leaving work early for his lunch time.

In April, 1983, the claimant was suspended for several days, and received a written warning, because the employer thought he was "messing around" with his tractor. His tractor became stuck in the mud in an area of Goucher College where he should not have been. But, the employer did not know the true facts of the circumstance. The claimant was being towed in his tractor by another tractor operated by the James. James selected the route which was an alternate route rather than a hard road and, accordingly, the claimant's tractor became stuck in the mud due to road selection by James, and through no fault of the claimant. The claimant discussed this with the employer and his three-day suspension was reduced to two days.

On September 14, 1983, the claimant was working and using a weed eater. A weed eater is a mechanized long pole with a motor attached to cut weeds. During his 15 minute break, the claimant collected all the materials he was using, and placed them in a pile . There was no way to lock them up. The weed eater became lost. The claimant did not lose it. The weed eater was eventually found. The claimant received a written reprimand about this, even though it was not his fault. There was nothing he could do other than put all his equipment together as he was instructed when he went to his break.

On the last day the claimant worked, he was operating a truck, and there were icy road conditions. He was observed by the dispatching supervisor "fish-tailing" the truck. Fish-tailing means to move the truck in such a way that the body will move back and forth. This was sort of playing with the truck, and caused damaged to the clutch. The claimant was ultimately fired for misuse of company property, namely, because of his activity with the truck on the day in question.

When the claimant was advised that he might be fired, he mentioned something about the use of a shotgun by other people in similar circumstances to his. He was not threatening anyone.

CONCLUSIONS OF LAW

In most of the instances for which the claimant received written reprimands, he was not the party responsible for the events. The weed eater was simply placed by him in the proper pile when he went on a break, and taken by someone else, but it was recovered. There is no wrongdoing found from the evidence of April, 1983 where the tractor was stuck in the mud, since the claimant was being hauled by another employee who operated another tractor, and that other employee had control over the destination and the method of getting to the destination. The

sole events that seem to have caused the claimant's discharge, were the events of his last day of work, where he was fish-tailing a truck. As such, his conduct clearly constitutes misconduct connected with the work within the meaning of Section 6 (c) of the Law, and is disqualifying. The claimant's conduct fails to constitute gross misconduct in this case. The claimant did misuse company property. There is nothing in the testimony to show that the claimant deliberately and willfully disregarded his standards of behavior which the employer had a right to expect, showing a gross indifference to the employer's interest, nor is there a series of repeated violations of employment rules proving that the claimant regularly and wantonly disregarded his obligations to his employer and, hence, there can be no finding of gross misconduct connected with the work.

The claimant did clearly transgress established employment rules when he fish-tailed the truck, and when he left early for lunch. In doing so, his conduct is disqualifying under Section 6 (c) of the Law.

DECISION

The claimant was discharged from employment for misconduct connected with the work within the meaning of Section 6 (c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning January 8, 1984 and the seven weeks immediate ly following.

The determination of the Claims Examiner is affirmed, but modified in favor of the claimant.

The employer's protest is denied.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.

J. Martin Whitman
APPEALS REFEREE

Date of Hearing - 3/23/84
cd/9512
(2117/Haberkam)

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Claimant
Employer
Unemployment Insurance - Bel Air

The Gibbens Company, Incorporated