

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.: 633-BH-87  
Date: Sept. 21, 1987  
Claimant: George Gunther, III  
Appeal No.: 8701623  
S. S. No.:  
Employer: City of Baltimore  
c/o Charlie Spinnak  
L.O. No.: 1  
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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON October 21, 1987

— APPEARANCES —

FOR THE CLAIMANT:

George Gunther, III

FOR THE EMPLOYER:

Sgt. Samuel  
Hawkins  
Charlie Spinner

## 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.

## FINDINGS OF FACT

The claimant was employed from June, 1981 through November 12, 1986 for the employer, the Baltimore City Jail. He was fired for a long history of absenteeism and latenesses. During the course of his employment, he had seven occasions during which he did not show for work and either did not call at all or called in late. Three of these occasions were in the last year of his employment.

The employer maintained a system whereby an employee was allowed a certain number of absences before getting into disciplinary trouble. These absences would not be counted against the employee after a certain amount of time had passed. During the period between 1981 and 1985, the claimant accumulated 27 absences. As soon as an absence would become of such an age that it would no longer be counted against him, he would again be absent. The claimant's absenteeism and lateness problems prior to 1984 were not caused by any type of alcohol addiction.

The claimant voluntarily went to the Employee Assistance Program in late 1984 or in 1985. At that time, he was told that he did not have a significant drinking problem. Beginning in 1985, the claimant did begin to drink such an amount that he was often unfit to come to work.

On February 25, 1986, the claimant was placed on probation due to his continued absences and mandatorily referred by the employer to the Employee Assistance Program. The claimant attended this program for about seven weeks and then quit. He was then absent four times, once without calling in, and was once again placed on probation and mandatorily referred to the Employee Assistance Program on September 3, 1986. He was then late one time and absent one time within the next month and was terminated on November 12, 1986 for failure to comply with the terms of his original probation in February or the extended probation in September.

After the claimant was discharged, he began inpatient treatment for alcoholism. He did not appeal the discharge because he did not want the job any more.

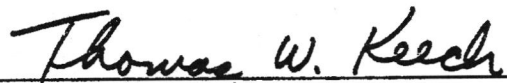
CONCLUSIONS OF LAW

Despite the fact that the claimant once voluntarily went to the Employee Assistance Program, the fact remains that when he was mandatorily referred to that program in February of 1986, he dropped out of the program within seven weeks and continued his pattern of missing work and being late for work. The claimant was once again mandatorily referred, without any beneficial effect on his work performance. The employer obviously did everything within its power to assist the claimant in conquering his alcohol problem, and the claimant's failure to abide by the treatment negates any argument he may have that his conduct was due to an uncontrollable illness. In fact, the claimant's absenteeism over the last year was not significantly worse than his previous absenteeism record, which extended back to 1981, a time at which he was not suffering any problems with alcohol. Altogether, the claimant's conduct was a series of repeated violations of work rules, showing a gross indifference to the employer's interest. This was gross misconduct within the meaning of Section 6(b) of the 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 the receipt of benefits from the week beginning November 9, 1986 and until he becomes reemployed, earns ten times his weekly benefit amount (\$1,950) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

kbm

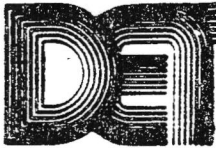
Date of Hearing: June 9, 1987

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND  
William Donald Schaefer

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman  
HAZEL A. WARNICK  
Associate Member  
SEVERNE LANIER  
Appeals Counselor  
MARK R. WOLF  
Chief Hearing Examiner

— DECISION —

Date: Mailed 3/20/87

Claimant: George E. Gunther, III      Appeal No.: 8701623

S. S. No.:

Employer: City Of Baltimore

L.O. No.: 01

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.

—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 April 6, 1987

— APPEARANCES —

FOR THE CLAIMANT;

FOR THE EMPLOYER:

Claimant-Present

Samuel Hawkins-  
Personnel Sergeant-  
Balto. City Jail;  
Charlie Spinner-  
Personnel Technician  
Supervisor

EVIDENCE PRESENTED

The employer presents evidence that the claimant was discharged for excessive tardiness and absenteeism, even after repeated warnings, multiple suspensions and failure to meet the terms of probation.

The claimant concedes that he was repeatedly tardy, absent, that he failed to meet the terms of probation, and he does not argue with the employer's evidence that he was discharged for such reasons. However, the claimant asserts that his attendance problems as Correctional Officer at the Baltimore City Jail were directly attributable to alcoholism; that he voluntarily attended an employee assistance program but which failed to properly diagnose the severity of his condition. After the claimant was discharged, he voluntarily sought alcoholism treatment, which treatment has proven to be successful. A letter from a social worker with the University of Maryland School of Medicine indicates that the claimant was addicted to alcohol, which is an illness, and that his behavior was attributable to the same.

#### FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Baltimore, effective January 4, 1987.

The claimant was employed by the Baltimore City Jail for a period of five and a half years as a Correctional Officer, until November 12, 1986. He was discharged effective November 18, 1986 for violation of employer's rules with respect to tardiness and absenteeism. The claimant had been repeatedly warned and suspended with respect to this problem. Further, he violated the terms of a one-year probation imposed upon him after the series of disciplinary actions taken.

The claimant was directed to attend an employee assistance program, with which order he complied. However, the employer's personnel in such program failed to properly diagnose the severity of the claimant's problem. The claimant is an alcoholic, and after discharge, he voluntarily entered the program, with much success.

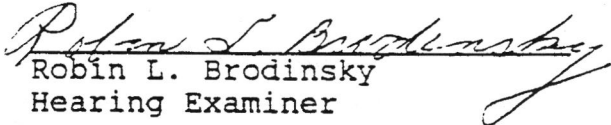
I find as fact that the claimant violated the employer's rules with respect to tardiness and attendance. I further find as fact that the claimant violated the terms of probation. I further find as fact that the claimant's alcoholism problems began approximately two years prior to his discharge. I find as fact that the claimant's work-related problems were directly attributable to alcoholism.

CONCLUSIONS OF LAW

It is concluded that the claimant was suffering from an illness, caused by alcoholism. I believe that the claimant understood the consequences of his action, but that his illness caused problems which he was facing and the corrective action taken by the employer. The claimant's conduct showed a deviation from that standard of conduct which an employer has a reasonable right to expect, which constitutes "misconduct connected with his work" within the meaning of Section 6(c) of the Unemployment Insurance Law. The evidence does not support a finding that his actions show "gross misconduct connected with his work" as defined by Section 6(b) of the Statute. In this case, the intent is lacking to show gross indifference to the employer's interest, or that his conduct was a regular and wanton disregard of his obligations. Accordingly, the maximum disqualification as provided for under Section 6(c) of the Statute shall be imposed.

DECISION

It is held that the claimant was discharged for misconduct connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning November 16, 1986 and the nine weeks immediately following. Benefits are allowable thereafter, provided the claimant has filed proper claims for benefits and is otherwise meeting the requirements of the Unemployment Insurance Law, including the specific requirements of Section 4(c) of the Law.

  
Robin L. Brodinsky  
Hearing Examiner

Date of hearing: 3/12/87  
Cassette: 1110  
hf (Merryman)

Copies mailed on 3/20/87

Claimant  
Employer  
Unemployment Insurance - Baltimore