

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.: 639-BH-87
Date: Sept. 23, 1987
Claimant: Napoleon May
Appeal No.: 8610003
S. S. No.:
Employer: Rudy's Patisserie, Inc.
ATTN: Rudolph Rauch
L.O. No.: 1
Appellant: CLAIMANT

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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

October 23, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Napoleon May, Claimant;
Leah Seaton, Esq.

FOR THE EMPLOYER:

Employer not
represented

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the testimony presented at the hearing before the Board of Appeals. 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.

This case was remanded to the Board by the Circuit Court for Baltimore City because the taped transcript of the prior hearing before the Hearing Examiner could not be transcribed, and therefore the testimony given before the Hearing Examiner could not be considered. In accordance with the remand order, a de novo hearing was scheduled on this case on Tuesday, September 15, 1987. The employer failed to appear or present any testimony.

FINDINGS OF FACT

The claimant was employed by Rudy's Patisserie as a baker, from approximately July of 1985 until May of 1986 when he was discharged. He was earning approximately \$6.00 per hour.

The claimant was discharged because he overslept and consequently was late two separate occasions. The claimant's hours were from 2:00 a.m. to 11:00 a.m. On the first occasion, he woke up at approximately 5:00 a.m. because he had forgotten to set his alarm. He called the employer, and when he arrived several hours late, the employer counseled him. The employer initially gave the claimant a written warning, which he signed, but he subsequently forgave the claimant for this first occurrence of lateness. However, the claimant again overslept and was several hours late on a second occasion in May of 1986. This time he was discharged. Except for the two incidents described above, the evidence fails to show that the claimant had any other attendance or performance problems on the job.

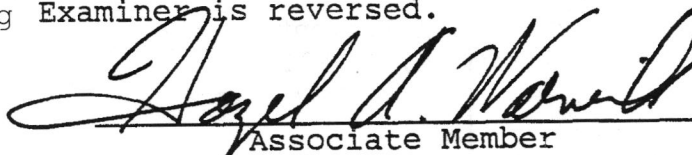
CONCLUSIONS OF LAW

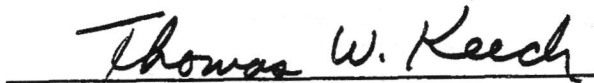
Based on the uncontested testimony of the claimant before the Board of Appeals, the Board concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law. There is no evidence in the record to support the original finding of gross misconduct within the meaning of Section 6(b) of the law. However, the Board concludes that the claimant's two incidents of lateness do constitute simple misconduct; since these are the only two occurrences in a year and one-half, only the minimum penalty will be imposed.

DECISION

The claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 18, 1986 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kbm

Date of Hearing: September 15, 1987

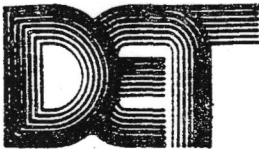
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS

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HAZEL A WARNICK
MAURICE E. DILL
Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R WOLF
Chief Hearing Examiner

DECISION

Claimant: Napoleon May
Date: Mailed 11/24/86
Appeal No.: 8610003
S. S. No.:
Employer: Rudy's Patisserie, Incorporated
LO. No.: 01
Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work under Section 6 (b) 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 12/9/86

APPEARANCES

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by
Randolph Rauch,
Owner

FINDINGS OF FACT

The claimant was employed by a bakery from July, 1985 until May 29, 1986, when he was discharged by the owner.

The claimant was discharged when he did not report for work as scheduled and did not call the employer to inform the employer that he would be out. Instead, the claimant reported to work on his next scheduled day and was discharged.

The claimant had been given a written warning by the employer and a verbal warning by the employer. The written warning was given on May 13, 1986 informing him that an absence from work without notice on May 11, 1986 was unacceptable and that if he missed work again without notice or explanation, he would be fired. The claimant did miss work again without notice and was discharged. The claimant's only excuse for failing to report for work on the occasions he missed was that he overslept.

Additionally, the employer had trouble with the claimant in that the claimant would report for work drunk on a number of occasions.

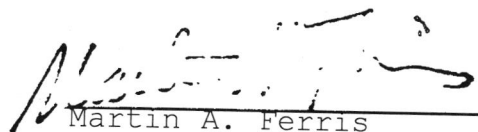
CONCLUSIONS OF LAW

The claimant was discharged by the employer for gross misconduct connected with his work within the meaning of Section 6 (b) of the Law. The claimant's conduct was a deliberate and willful disregard of standards of behavior which the employer had a right to expect, showing a gross indifference to the employer's interest. His conduct also constitutes a series of repeated violations of employment rules proving that he regularly and wantonly disregarded obligations to the employer.

DECISION

The claimant was discharged for gross misconduct connected with his work with the meaning of Section 6 (b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning May 18, 1986 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1230), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.



Martin A. Ferris

HEARING EXAMINER

DATE OF HEARING - 11/13/86

cd

Grady

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Claimant
Employer
Unemployment Insurance - Baltimore