

 **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.:	651-BR-91
	Date:	May 31, 1991
Claimant: Robert R. Myrick	Appeal No.:	9102684
	S. S. No.:	
Employer: Toepfer Construction Co., Inc.	L.O. No.:	7
	Appellant:	CLAIMANT
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 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, 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 AT MIDNIGHT ON June 30, 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 as to the issue of whether or not the claimant filed a timely appeal within the meaning of Section 7(c)(3).

The Board concludes that the claimant's appeal was timely, and will therefore decide this case on its merits. The Board's decision is based on the testimony on the merits presented by the claimant at the hearing on April 9, 1991.

The claimant left work early without permission. The claimant was riding to and from work with a co-worker who had been given permission to leave early. However, upon learning that his co-worker was leaving early, the claimant did not attempt to obtain permission to leave early also.

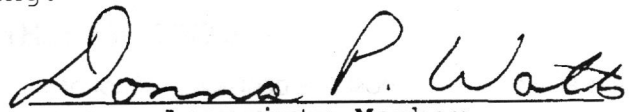
The claimant's conduct of leaving work early on one occasion is misconduct, pursuant to Section 6(c) of the Maryland Unemployment Insurance Law. There is no evidence to sustain a finding that the claimant falsified his time records. The claimant's actions do not rise to the level of gross misconduct as defined in Section 6(b) of the Law.

DECISION


It is held that the claimant filed a valid and timely appeal within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law. The decision of the Hearing Examiner is reversed as to this issue.

The claimant was not discharged for gross misconduct as defined in Section 6(b) of the Law. The decision of the Hearing Examiner as to this issue is reversed.

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 December 23, 1990 and the nine weeks immediately following.



Associate Member



Associate Member

D:H
kmb
COPIES MAILED TO:

CLAIMANT
EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



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: 4/11/91
Claimant:	Appeal No.: 9102684
Robert R. Mvrick	S. S. No.:
Employer:	LO. No.: 007
Toepfer Construction Co. , Inc.	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, within the meaning of COMAR 24.02.06.02(N).

— 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 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

April 26, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

Not Represented

The claimant was denied benefits by the determination of the Claims Examiner on the ground that he was discharged for gross misconduct connected with the work. The claimant appealed this determination and the hearing was scheduled to be held on March 8, 1991 at College Park local office. The claimant failed to appear and the case was dismissed.

The claimant filed a timely petition for reopening and appeared

at a hearing held on April 9, 1991 at which time for a good cause shown, the case was reopened under COMAR 24.02.06.02(N).

FINDINGS OF FACT

A benefit determination mailed to the parties provides that the last day to file a timely appeal was February 14, 1991.

In this case, the appeal was either postmarked or filed in person on February 20, 1991.

The appellant offers as a reason for late appeal that he did not understand the determination. The claimant has been to the tenth grade and can read and write.

CONCLUSIONS OF LAW

It is concluded that there is good cause to reopen this case.

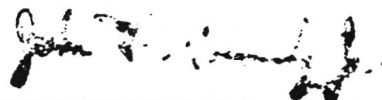
In Premick v. Roper Eastern (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant filed a late appeal for reasons which do not constitute good cause under the provisions of Article 95A, Section 7(c)(3) and legal precedent construing that action.

DECISION

There is good cause to reopen this case, within the provisions COMAR 24.02.06.02(N).

It is held that the appellant did not file a valid and timely appeal within the meaning and intent of Article 95A, Section 7(c)(3).

The determination of the Claims Examiner (and any disqualification applied), remains effective and unchanged.



John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: 4/9/91
ps/Specialist ID: 07221
Cassette No: 2805
Copies mailed on 4/11/91 to:

Claimant
Employer
Unemployment Insurance - College Park (MABS)