



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.:	677-SE-90	
	Date:	July 9, 1990	
Claimant:	Mary A. Hart	Appeal No.:	8915311
		S. S. No.:	
Employer:	Eagle Maintenance Serv. , Inc. ATTN: Samuel A. Morrison, V.P.	L.O. No.:	20
		Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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.

August 8 , 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Mary Hart, Claimant
Harvey Taylor, Esq.
Lewis Williams, Witness
Mary Hart (Claimant's Daughter)

FOR THE EMPLOYER:

Samuel Morrison,
Vice President;
Robert Freto,
Project Manager;
Gloria Barnes,
Witness;
Barry Butler,
Witness;
Steve McDaniels,
Witness

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 filed her original claim in the Waldorf local office with an effective date of October 8, 1989. Her weekly benefit amount was determined to be \$205.

The claimant worked at Eagle Maintenance Services, Inc. from June 27, 1988 to October 6, 1989 as a Project Manager. She was earning \$14.50 an hour, and she was required to work 40 hours per week.

The claimant was discharged from her position for unauthorized use of a company vehicle, equipment, materials and supplies which were ultimately appropriated to her own use, as well as for the misuse of the employer's personnel.

The claimant had a contract with Riverview Apartments to clean apartments, when tenants moved out. The claimant used this employer's equipment and personnel to perform work at the Riverview Apartments. The employer did not authorize these acts.

The Board of Appeals finds as a fact that on three separate occasions the claimant, Mary Hart, directed Steve McDaniels, an employee of Eagle Maintenance Services, Inc., to repossess three separate apartments in the Riverview apartment complex, apartments no. 38, 30, and 22, and perform the work of stripping and waxing the floors.

On each occasion, the claimant would call Mr. McDaniels into work, prior to his regularly scheduled starting time. Steve McDaniels was a part-time employee, working from 12 Noon to 4:00 p.m. The claimant would authorize him to take her employer's materials, supplies and equipment, and she would direct him to a specific apartment within this apartment complex. On at least one occasion, the claimant instructed Barry Butler, also an employee of Eagle Maintenance Services, Inc., to assist Steve McDaniels in loading the employer's 1988 Ford Van, along with one buffer, several mop buckets, as well as supplies and materials, and she specifically instructed Mr. Butler to drive Mr. McDaniels to the Riverview apartment complex and assist him in unloading the employer's van so Mr. McDaniels could proceed with cleaning and stripping the floors of a specific apartment unit.

The Board further finds as a fact that all work performed by Steve McDaniels, either prior to 12 Noon or subsequent to 4:00 p.m., was recorded on this employer's time card. Mr. McDaniels received monetary compensation for this work solely from Eagle Maintenance Services, Inc.

The Board of Appeals further finds as a fact that although Steve McDaniels believed he was performing services for one of his employer's clients, he was actually performing services for the claimant, in her individual and personal capacity as President of Hartco Janitorial Services. For work performed by Steve McDaniels in this capacity, he did not receive any monetary compensation from Hartco Janitorial Services.

CONCLUSIONS OF LAW

Gross misconduct is defined in Section 6(b) of the Maryland Unemployment Insurance Law as conduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest; or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations.

In this case, the claimant's actions of instructing the employer's personnel to report to a specific work site, which was in no way affiliated with any of the employer's clients, and to perform work at this site with company equipment, materials and supplies, and authorizing payment to the individual performing such services from the employer's payroll department, knowing that the assignment of the individual to this particular project was for the sole and direct benefit of her own janitorial services company, clearly fall within the definition of gross misconduct connected with her work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Therefore, the decision of the Hearing Examiner will be reversed.

The Board will impose a disqualification of benefits within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

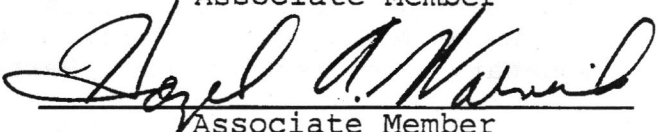
DECISION

The claimant was discharged for gross misconduct, connected with the work within the meaning of Section 6(b) of the

Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning October 1, 1989 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$2,050), and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiners reversed.


Associate Member


Associate Member

DW:W

kbm

Date of Hearing: April 4, 1990

COPIES MAILED TO:

CLAIMANT

EMPLOYER

H. L. Taylor, Esq.

UNEMPLOYMENT INSURANCE - WALDORF



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

Telephone: 333-5040

— DECISION —

Date: Mailed: February 6, 1990

Claimant: Mary A. Hart Appeal No.: 8915311

S. S. No.:

Employer: Eagle Maintenance & Janitorial Service, Inc. LO. No.: 20

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 OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

February 21, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Mary A. Hart - Claimant
H.L. Taylor - Esquire
Louis Williams - Witness
Carl Savoy - Witness
Mary A. Hart - Claimant's daughter

Samuel A. Morrison,
Vice President
Robert E. Freto,
Project Manager

FINDINGS OF FACT

An appeal hearing was scheduled for the claimant and Eagle Maintenance & Janitorial Service, Inc. on December 28, 1989 at 11:00 a.m. in Waldorf, Maryland. The claimant failed to appear for the hearing scheduled for December 28, 1989 at 11:00 a.m.; therefore, the case was dismissed on the record. The claimant did not appear for the hearing scheduled for December 28, 1989 because the claimant wanted a material witness to appear for the hearing; however, the witness was unable to attend the hearing scheduled for December 28, 1989. The claimant's attorney sent a letter on December 26, 1989 to the State of Maryland requesting a postponement of the hearing since the claimant's witness was unable to be present for the hearing scheduled for December 28, 1989. The claimant's request by her attorney to have the case postponed for December 28, 1989 was denied by the Administrative Officer from the State of Maryland Appeals Division.

The claimant had been employed by Eagle Maintenance & Janitorial Services, Inc. from June 28, 1988 to October 6, 1989 as a project manager working at the Naval Ordnance Station in Indian Head, Maryland.

The claimant was terminated from employment Eagle Maintenance & Janitorial Services, Inc. because the employer concluded that the claimant had violated company policy for the unauthorized use of company property, company vehicle, and equipment for employees of the Eagle Maintenance & Janitorial Services, Inc. to clean the interior of the Riverview Apartments. The claimant concluded that she did not violate company policy by the unauthorized use of company property, vehicles and equipment for employees of Eagle Maintenance & Janitorial Services, Inc. to clean the interior of the Riverview Apartments. Eagle Maintenance & Janitorial Services, Inc. could not give specific dates that the claimant had instructed an employee of Eagle Maintenance & Janitorial Services, Inc. to clean the interior of the Riverview Apartments.

Eagle Maintenance & Janitorial Services, Inc. did not have a witness testify as to first hand knowledge that employees of Eagle Maintenance & Janitorial Services, Inc. had cleaned the interior of the Riverview Apartments located at the Navy Ordnance Service in Indian Head, Maryland. The Hearing Examiner finds as a fact that the claimant did not violate company policy by the unauthorized use of company property, vehicles and equipment to clean the interior of the Riverview Apartments. The claimant is the president of Hartco Janitorial Services; the claimant did not have any employee of Eagle Maintenance & Janitorial Services, Inc. perform work that was to be performed by the employees of Hartco Janitorial Service at the Naval Ordnance Service in Indian Head, Maryland.

CONCLUSIONS OF LAW

Since the claimant had requested that the hearing scheduled for December 28, 1989 be postponed because one of her witnesses could not attend the appeal hearing, it will be held that there is good cause to reopen a dismissed case under COMA 24.02.06.02(N)

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

In the issue of gross misconduct under Section 6(b) of the Law the burden is upon the employer to show by a preponderance of the evidence that the claimant has violated a company rule or policy. Eagle Maintenance & Janitorial Services, Inc. did not have a witness testify as to first hand knowledge that the claimant had violated a company rule by the unauthorized use of company materials, equipment, and company vehicle. Therefore, it will be held that the employer has not met their burden to show gross misconduct under Section 6(b) of the Law.

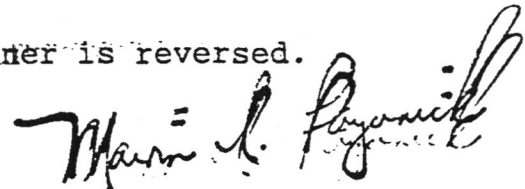
DECISION

It is be held that there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law.

No disqualification is imposed based on her separation from employment with Eagle Maintenance & Janitorial Services, Inc. The claimant may contact the local office about the other eligibility requirements of the Law.

The determination of this Claim Examiner is reversed.



Marvin I. Pazornick
Hearing Examiner

Date of Hearing: February 1, 1990
bch/Specialist ID: 20690
Cassette No: 848-B & 849 A&B
Copies mailed on February 6, 1990 to:

Claimant
Employer
Unemployment Insurance - Waldorf (MABS)

H. L. Taylor, Esquire