



# 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.:	681-BR-91	
	Date:	June 7, 1991	
Claimant:	Cynthia B. Winestock	Appeal No.:	91-CWC-140
		S. S. No.:	
Employer:	Dimensions Health Corporation c/o Gibbens Company	L.O.No.:	7
		Appellant:	EMPLOYER
Issue:	Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the law.		

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**— 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 July 7, 1991

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**— 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.

The Hearing Examiner found that the employer failed to meet its burden of proving that the claimant was discharged for gross misconduct; the Board disagrees.

The employer presented substantial evidence of two incidents where the claimant mislabeled specimens and failed to follow proper procedures. She was suspended after the first and discharged after the second. These incidents were serious, could have led to dangerous consequences for the patients involved and were traced back directly to the claimant.

The claimant admitted, on one occasion, that she knew that the labels didn't match, but did nothing to correct the situation (see Employer's Exhibit #4).

Her only defense was that someone else could have used her computer and accessed her code, when she stepped away from her desk. However, the claimant was not supposed to leave her computer on with her code accessed, even if she was away from her desk for a short time. Therefore, even if this had occurred, it would still have been the claimant's responsibility. The claimant was trained in the proper procedures and understood the seriousness of her job.

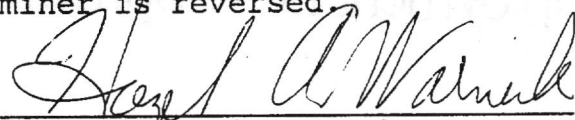
In Bockai v. Suburban Hospital, 728-BR-85, the Board held that a higher degree of care can and should be required of claimants whose work involves critical risks to the life and health of others. The Board found in that case that the claimant -- pharmacist's repeated negligence in the performance of job duties, after warnings, was gross misconduct.

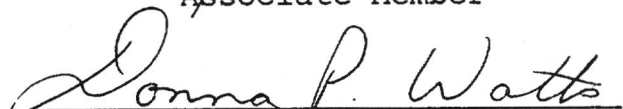
Applying that reasoning here, the Board concludes that the claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Law.

#### 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 November 4, 1990 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$2,150.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Associate Member

H:D

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*

*Telephone: 333-5040*

— D E C I S I O N —

Claimant:	Cynthia B. Winestock	Date:	Mailed: April 23, . 1991
		Appeal No.:	91-CWC-140
		S. S. No.:	-
Employer:	Dimensions Health Corp. c/o The Gibbens Co., Inc.	L.O. No.:	7
		Appellant:	Employer
Issue:	Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law. Whether the employer filed a timely appeal within the meaning of Section 7(c)(3) of the Law.		

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— 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.

May 8, 1991

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

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— A P P E A R A N C E S —

FOR THE CLAIMANT:

Cynthia B. Winestock - Claimant

FOR THE EMPLOYER:

Cindy Schroeder -  
The Gibbens Co.,  
Inc.; Jeannie  
Colfack - Assistant  
Lab Manager

FINDINGS OF FACT

The last day to file an appeal in this case was March 12, 1991; the employer's appeal was filed on or about March 12, 1991.

The employer's appeal was filed by mail. The postmark date is the date of appeal. The envelope with the postmark date was either discarded or misplaced by the Agency. Therefore, I find that this appeal is timely.

The claimant was discharged and applied for benefits. The Claims Examiner determined that she was discharged, but not for misconduct and benefits were allowed. The employer appeals.

From April 5, 1990 through November 22, 1990, the claimant was employed as a data technician.

Her primary duty was to label laboratory specimens taken from patients.

She was discharged after two mislabeled specimens were traced to her computer on or about August 5, 1990 and November 6, 1990. I find that:

The labels did come from the claimant's computer, but the evidence is insufficient to find that the claimant actually printed the labels.

I find that it was the claimant's primary job to print labels and label specimens, but from time to time others enter the lab to assist. I, therefore, further find it reasonable to conclude that someone else could have labeled the specimens other than the claimant.

I find that there is a connection between the labels and the claimant's computer. To print labels from the computer, each employee had a code. I further find that since others from time to time entered the lab to assist, they could have used the claimant's computer to print the label while she was away from her station.

#### CONCLUSIONS OF LAW

I find the employer's appeal timely. The postmark date is the date of appeal. Since the envelope with the postmark date has either been discarded or misplaced by the Agency, I find in favor of the employer.

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.

The employer's representative requested a finding of of gross misconduct. In gross misconduct cases, the burden of proof is on the employer. In this case, I find that the evidence is insufficient to support a finding that the claimant was discharged for misconduct or gross misconduct.

#### DECISION

The determination of the Claims Examiner is affirmed.

The claimant was discharged, but not for misconduct or gross misconduct connected with the work, within the meaning of Section 6(c) or Section 6(b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from her employment with Dimensions Health Corporation. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

  
Van D. Caldwell  
Hearing Examiner

Date of hearing: 4/8/91  
amp/Specialist ID: 07204  
Cassette No. 3699  
Copies mailed on April 23, 1991 to:

Claimant  
Employer  
Unemployment insurance - College Park (MABS)