

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

**— DECISION —**

	Decision No.:	69-BR-92
	Date:	January 17, 1992
Claimant: Holly J. Teal	Appeal No.:	9113220
	S. S. No.:	
Employer: Mellon Bank c/o Frick Company	L O. No.:	23
	Appellant:	CLAIMANT
Issue:	Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.	

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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

February 16, 1992

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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 claimant was promised, at the time of her hire, that her hours of work would be 8:00 a.m. to 5:00 p.m. each day. The claimant worked these hours from November 1986 until her termination in June of 1991.

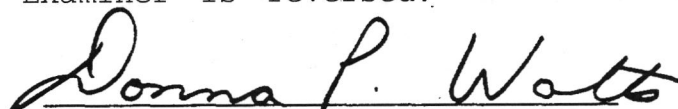
The employer tried to re-negotiate the claimant's hours of work. However, the claimant never agreed to change her hours of employment. When the claimant would not agree to a change, the employer terminated her.

The claimant's termination was for reasons that do not amount to misconduct or gross misconduct as defined in Section 8-1002 or 8-1003 of the Labor and Employment Article (formerly Sections 6(b) and 6(c) of the law). The claimant's refusal to change the hours of work she was promised is not misconduct or gross misconduct.

#### DECISION

The claimant was discharged but not for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon her separation from employment with Mellon Bank.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Chairman

D:K

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John P. Geiss, Esquire

UNEMPLOYMENT INSURANCE - COLUMBIA



# 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 —

Claimant:	Holly J. Teal	Date:	Mailed: 08/30/91
		Appeal No.:	9113220
		S. S. No.:	
Employer:	Mellon Bank c/o Frick Company	L.O. No.:	23
		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 the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) 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

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

September 16, 1991

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### — APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present;  
John Geiss, Esq.

FOR THE EMPLOYER:

Cindy Dankert,  
Human Resources  
Manager;  
John Franklin,  
Credit Operations  
Manager

## FINDINGS OF FACT

The claimant began working for the employer's predecessor beginning on or about November 17, 1985. She was a full-time collector. In December, 1989, the claimant's original employer was purchased by Mellon Bank. Most, if not all of the employees, continued working for Mellon Bank.

Even before the purchase, the claimant's schedule was creating problems with the other employees. When the claimant was hired, she was promised that she could work everyday from 8:00 a.m. until 5:00 p.m. All of the other employees who had the same position as the claimant, worked two evenings per week and some Saturdays. On the days that the employees were required to work evenings, their hours were from 11:00 a.m. until 8:00 p.m. The claimant did not work any evenings, and little, if any, Saturdays. She was, however, an excellent employee and took work home with her.

Even before the purchase by Mellon Bank, the employer began talking to the claimant about conforming her schedule to the other employees' schedule. The reason that the claimant did not work evenings or Saturdays is primarily due to her children. She has a child with a learning disability, and she wanted to be home in the evenings with that child, in order to help the child with his homework. In addition, the claimant's mother took care of that child and later, a baby that the claimant had in subsequent years, and the claimant did not want her mother to sit for her past 6:00 p.m. The testimony disclosed that the claimant made little, if any, attempts to try to get additional baby sitting for her children so that she could be in a position in order to conform her schedule, as requested by the employer. The only times that the claimant, in all of her work history, agreed to work any evenings was when her husband could be home in the evenings.

An additional reason, apparently, for the claimant's reluctance to work evenings or Saturdays was due to her phobia about driving on highways. Since the employer's place of business was near the airport, it was necessary that the claimant drive on highways in order to get to the place of business from the claimant's residence. When the claimant began employment with the employer's predecessor, she was in a van carpool. Later she was brought to and from work by a co-worker and her husband. It is not clear why the claimant could not obtain similar rides from her husband, if she got off work at 8:00 p.m., instead of 5:00 p.m. Moreover the claimant described that her husband began traveling more extensively for his job, and therefore, a question was left unanswered as to who was going to get the claimant at 5:00 p.m. on the days that the husband was traveling.

The employer established that it had legitimate reasons for requesting that the claimant change her schedule to conform to the others. Statistical data suggested that the primary times to contact consumers was from 6:00 to 8:00 p.m. during the week, and on Saturday mornings. Moreover the claimant's individual schedule was causing severe morale problems, and the employer had had numerous complaints from the other employees. In addition, the employer needed the claimant to change her schedule for security purposes, as the employer, when scheduling female workers, wanted more than one worker in the evenings. The fact that the claimant did not work any evenings, caused or could cause a scheduling problem where only one female worker would be at work in the evenings.

Beginning in January, 1991, the employer began making serious attempts to try to get the claimant to conform her schedule to the others. The claimant consistently refused to do so, and did not consider any options. The employer terminated the claimant in June, 1991, when the claimant refused to change her schedule.

The employer has branch offices in numerous other states. All of the other collectors, in all of the other states, have the identical schedule, being required to work several evenings per week, as well as some Saturdays.

Moreover the employer's operations were becoming computerized and it would no longer be feasible or practical for the claimant to continue doing additional work at home.

#### CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides that an individual shall be disqualified from benefits where he/she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has a right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

This claimant is in an industry which requires evening work. Substantial evidence exists that the prime time to accomplish the job requirements are from 6:00 p.m. to 8:00 p.m., and on Saturday mornings. The employer's predecessor apparently valued the claimant as an employee, and was willing to accommodate her desires. This employer apparently was not willing to likewise accommodate the claimant, but legitimately wanted the claimant to conform her schedule to the schedule of all of its other employees who performed this job function. It is highly understandable that the claimant's preferred schedule would certainly cause morale problems with the other employees, who also wanted to be home in the evenings with their families.

Moreover the fact that the employer was computerizing its operations, made it unacceptable for the claimant to continue working at home.

Simply put, the employer's business required night time hours, and the claimant simply was unwilling to conform her schedule. The claimant's stated reasons for not being able to work evening hours, are rejected. It seems that the claimant simply wanted to be home in the evenings with her children. However, others in the office similarly would have liked to be home in the evenings with their children. The claimant made no efforts to obtain alternative baby sitting, in the event that her husband would not be home in the evening. Likewise, it was unclear how the claimant's phobia about driving on the highways prevented her from working in the evenings. If the claimant's husband was able to pick the claimant up at 5:00 p.m., then why could he not pick the claimant up at 8:00 p.m. In addition, the claimant's husband was beginning to travel more extensively, which would seem to interfere with the claimant's husband's ability to pick the claimant up even at 5:00 p.m. If the claimant had to make arrangements to have a ride at 5:00 p.m. in the event the husband was out of town, then it would seem that the claimant could have made some arrangements to have someone pick her up at 8:00 p.m. In essence the claimant wanted to be at home in the evenings with her children, but as previously noted, she was in an industry which simply required evening work.

The determination of the Claims Examiner will be reversed.

#### DECISION

The claimant was discharged for actions which constitute gross misconduct, in connection with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied the week beginning June 23, 1991 and until the claimant becomes re-employed and earns at least ten times her weekly benefit amount (\$2,150) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.



Gail Smith  
Hearing Examiner

Date of Hearing: 08/28/91  
dma/Specialist ID: 23890  
Cassette No.: 7437  
Copies mailed on 08/30/91 to:

Claimant  
Employer  
Unemployment Insurance - Columbia (MABS)

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