

 **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.:	706-BR-89
	Date:	August 24, 1989
Claimant: Amber Bradley	Appeal No.:	8906569
	S. S. No.:	
Employer: Liberty Medical Center, Inc. c/o The Gibbens Company	L.O. No.:	45
	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.

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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.

September 23, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

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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 Board adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts are sufficient to sustain a finding of gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

Section 6(b) of the law defines gross misconduct 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.

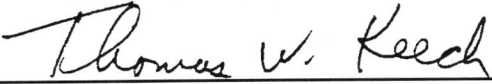
The claimant was found sleeping three times during her shift. She was warned the first two times, and given an opportunity to go home. The claimant chose to stay and finish her shift. Later, the claimant was again discovered sleeping on the job. The Board has previously held that sleeping twice on one shift without excuse is gross misconduct. Palmer v. Bent Nursing Home, 947-BH-86.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning February 12, 1989 and until she becomes re-employed, earns at least ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Chairman

DW:K  
kbm  
COPIES MAILED TO:

CLAIMANT  
EMPLOYER  
UNEMPLOYMENT INSURANCE - NORTHWEST

On February 12, 1989, the claimant was observed by Ms. Linton and Ms. McDaniel, sleeping on the job at 12:30 a.m.; 12:55 a.m.; and 3:05 a.m..

Ms. McDaniel asked the claimant if she wished to go home the claimant responded that she did not. The claimant was warned that the charge nurse would be called if she was caught sleeping again. When she was observed sleeping at 3:05 a.m., Ms. Weller, the Charge Nurse, was called and also observed her sleeping.

The claimant understood her duties and the serious consequences of not being alert on this unit.

#### CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113).

The employer requested a finding of gross misconduct, because the claimant had been previously warned. Although, there is evidence that the claimant was warned about sleeping three times on the same night, there is not evidence that she was warned on previous occasions about sleeping.

#### DECISION

The determination of the Claims Examiner is modified.

Benefits are denied from the week beginning February 12, 1989 and for the nine weeks ending April 22, 1989.

The determination denying benefits beginning February 12, 1989 and for the four weeks ending March 18, 1989, is rescinded.

  
Van D. Caldwell  
Hearing Examiner 

 **Maryland**  
Department of Economic &  
Employment Development

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

1100 North Eutaw Street  
Baltimore, Maryland  
21201

(301) 333-5040

— CORRECTED —  
— DECISION —

Claimant: Amber B. Bradley

Date: Mailed: 6/23/89

Decision No.: 8906569

S. S. No.:

Employer: Liberty Medical Center, Inc.  
c/o Gibbens Company

L.O. No: 045

Appellant: Employer

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Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 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

July 10, 1989

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Amber R. Bradley - Present

Robin McFadden,  
Gibbens Company;  
Martha Linton,  
Esther McDaniel; and  
Kathy Weller,  
Witnesses

FINDINGS OF FACT

The employer is a general hospital. From October 27, 1986 until February 12, 1989, the claimant worked as a psychiatric assistant on the 11:00 p.m. to 7:30 a.m., shift on the Acute Missions Unit of the Psychiatric Ward.

The claimant's duties required that she observe patients, make rounds, take vital signs, and be ready to render assistance in case of an emergency.

Date of Hearing: 6/16/89  
rch/Specialist ID: 45536  
Cassette Number: 5202 Dic  
Copies mailed on 6/23/89 to:

Claimant  
Employer  
Unemployment Insurance - Northwest (MABS)