



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.:	708-BR-90
	Date:	July 19, 1990
Claimant:	Frederick R. Reardon Marcey Halfway House	Appeal No.: 9004021
	S. S. No.:	
Employer:	Housing Authority of Balto. City City of Baltimore ATTN: Howard Jackson	L. O. No.: 21
	Appellant:	EMPLOYER
Issue:		

Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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 18, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 and concludes that the claimant was discharged for gross misconduct, within the meaning of Section 6(b).

While a claimant's alcoholism may be a mitigating factor in evaluating his misconduct, the evidence to support such a finding must be more than the mere fact that the claimant has a problem with alcohol. In Johnson v. Union Trust Company of Maryland, 204-BH-85, the Board concluded, based upon the evidence at the hearing, that the claimant was a chronic alcoholic but added that whether his resulting chronic absenteeism constitutes misconduct depends on whether his intoxication-induced behavior was the product of an irresistible compulsion to drink, as required by the Court in Jacobs v. California Unemployment Insurance Appeals Board, 25 Cal. App. 3d 1035 (1972).

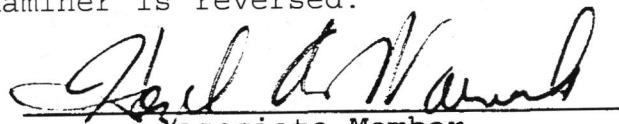
In this case, there is insufficient evidence that such an irresistible compulsion led to the claimant's absenteeism. Further, the claimant never informed the employer of his alleged drinking problem, or he might have been able to be referred to the employer's Employee Assistance Program.

The Board concludes that the claimant's failure to report for work for three days, without notifying the employer, under these circumstances, is gross misconduct within the meaning of Section 6(b).

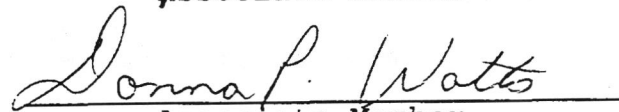
DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning December 24, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Associate Member



Associate Member

HW:W
kbn
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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - LEONARDTOWN

 **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: 4/20/90
Claimant: Frederick R. Reardon Marcey Halfway House	Appeal No.:	9004021
	S. S. No.:	_____
		0
Employer: House Authority of Baltimore City c/o Personnel Tech	LO. No.:	21
	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 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 5/7/90

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Steve Weldon,
Supervisor from the
Housing Authority
of Baltimore City
George Gentry,
Civil Service
Commission

FINDINGS OF FACT

The claimant worked for the employer from November 20, 1989 until December 26, 1989, as a Stationary Engineer earning \$11.35 per hour. The claimant has a problem with alcoholism. He has sought treatment in the past and continued to do so. On December 18, 19, 20, 1989, the claimant failed to report for work and also failed to call the employer to notify the employer of his absences. The reason for the claimant's absence was that he was drinking. The claimant's bout of drinking was precipitated by a stressful condition at work. One of the tanks was vibrating and the claimant was afraid that substantial damage would result.

Prior to his absenteeism in December 1989, the claimant did not have any absenteeism.

CONCLUSIONS OF LAW

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.

While the claimant's actions may ordinarily have constituted gross misconduct because he failed to report for work or to notify the employer that he would be absent for work or to notify his employer that he would be absent for work for three consecutive work days. In this situation, the claimant's conduct does not exhibit a deliberate and willful disregard of standards which the employer has a right to expect. Rather, the claimant has a problem with alcoholism for which he has been treated in the past and for which he continues to be treated.

However, the preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do rise to the level of misconduct, within the meaning of Section 6(c) of the Maryland Unemployment Insurance 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).

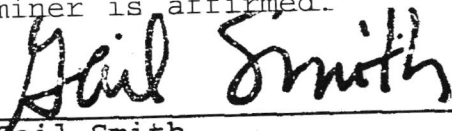
The employer has a right to expect that its employees report to work or if they do not, that they notify the employer that they are going to be absent from work.

The determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning December 24, 1989 and for the six weeks ending February 10, 1990.

The determination of the Claims Examiner is affirmed.



Gail Smith
Hearing Examiner

Date of hearing: 4/16/90
rc
(2960)-Specialist ID: 21486
Copies mailed on 4/20/90 to:

Claimant
Employer
Unemployment Insurance -Leonardtwn - (MABS)