



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

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Chairman

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SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 710-BR-85

Date: August 30, 1985

Claimant: Robert Roach

Appeal No.: 13967

S. S. No.:

Employer: Montgomery Co. Government

L.O. No.: 43

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of §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 MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF 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

September 29, 1985

— 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 record in this case is clear. The claimant worked for the Montgomery County Government as a service worker in the Department of Transportation. He began work in 1977. His last day of work was September 26, 1984.

Prior to the claimant's last day of work, he knew that he had a hearing in criminal court for September 27, 1984. The issue was whether he had violated the conditions of his probation. Prior to the claimant's last day of work, he realized that there was a possibility that he would be immediately incarcerated after the court hearing.

The claimant did not reveal this information to the employer. Instead, the claimant attempted to obtain a 30-day leave of absence from the employer shortly before his last day of work. The reason given for this leave of absence, that his mother was ill in New York, was insufficient, and the claimant's request was denied.

On September 27, 1984, the claimant appeared for his court hearing and was incarcerated following the hearing. He was found guilty of violation of probation. Being in jail, the claimant was unable to inform his employer that he would not be in. He had, however, previously called in sick for the date of September 27th itself. The claimant did not show for work on Friday, September 28, Monday, October 1, or Tuesday, October 2, 1984. Neither did he call the employer to advise the employer that he would not be in. Neither did he have any member of his family call his employer to advise him that he would not be in.

Not until October 3rd did the claimant's son visit his employer. The son, however, did not give the employer any information about the claimant's whereabouts but merely inquired as to whether the original leave of absence had been granted.

The claimant was fired for being absent without notice for these three work days and for several days afterwards.

The Board concludes that the claimant was discharged for gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law. The Board has repeatedly ruled that absenteeism caused by incarceration is gross misconduct within the meaning of §6(b) of the law where the incarceration is due to a conviction for criminal offenses. See, Atherton v. Potomac Amoco (2025-BR-83), and Green v. United Iron Metal Co. (2069-BH-83).

In this case there is the additional factor that the claimant did not advise his employer of his incarceration and subsequent inability to come to work. The record is clear that the claimant was well aware far beforehand that there was a good possibility that he would be incarcerated on the 27th. Despite this fact, the claimant neither before nor after the 27th advised the

employer within any reasonable amount of time that he was going to be absent. Even if the claimant's reason for absenteeism were adequate, the claimant's utter failure to take any reasonable steps to notify his employer and, in fact, his attempt to hide the fact from his employer, is in itself a violation of a standard of employment his employer has a right to expect, showing a gross disregard for his employer's interests. This also is gross misconduct within the meaning of §6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits for the week beginning September 30, 1984 and until he becomes re-employed, earns ten times his weekly benefit amount (\$1,750), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Raymond J. Varrick

Associate Member

K:W

DISSENT

I would affirm the decision of the Hearing Examiner.

Maurice E. Hill

Associate Member

D

kbm

COPIES MAILED TO:

CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - WHEATON



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MARK R. WOLF
Chief Hearing Examiner

DECISION

Claimant: Robert Roach

Date: Mailed 1/30/85

Appeal No.: 13967-EP

S. S. No.:

Employer: Montgomery County Government

L.O. No.: 43

Appellant: EMPLOYER

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 OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED 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 February 14, 1985

APPEARANCES

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by James Stuller, The Gibbens Company, Incorporated; and Sharkey Poole, District Supervisor - Department of Transportation

FINDINGS OF FACT

The claimant began working for the employer, the Montgomery County Government, as a full-time service worker in the Department of Transportation in 1977. His last day of work was September 26, 1984, and he was dropped from the employer's rolls, effective October 3, 1984.

The testimony and evidence reveal that the claimant was incarcerated by the Federal Court of the District of Columbia for violation of parole. He was released on October 17, 1984. The first contact Mr. Poole, the claimant's supervisor, received from the claimant was October 3, 1984, when the claimant's son reported his father's incarceration to Mr. Poole. The claimant requested a leave of absence, which was denied. The claimant did not report for work as scheduled on September 28, October 1, and 2, 1984. The employer's rules, in particular Section 18.1-A, provides unauthorized absence for three or more consecutive days is cause for dismissal.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for a non-disqualifying reason within the meaning of Section 6 (c) of the Maryland Unemployment Insurance Law, is not supported by the testimony and evidence before the Appeals Referee. Based on the weight of the testimony and the evidence, it must be held that the claimant was discharged for misconduct connected with the work within the meaning of Section 6 (c) of the Maryland Unemployment Insurance Law for unauthorized absence from the employment. The Board of Appeals has held in previous decisions that such actions from employment due to incarceration falls within the definition of misconduct. In the instant appeal, the claimant was clearly in violation of the employer's rules, and it is for this reason the determination of the Claims Examiner must be reversed.

The Appeals Referee cannot conclude that the claimant's conduct falls within the definition of gross misconduct as defined under Section 6 (b) of the Law.

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 September 30, 1984 and the nine weeks immediately following.

The determination of the Claims Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.



Gerald E. Askin
APPEALS REFEREE

Date of Hearing - 1/3/85
cd/7650
(0051/Clagett)

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Claimant
Employer
Unemployment Insurance - Wheaton

The Gibbens Company, Incorporated