



# 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.:	730 -BH-90
	Date:	July 25, 1990
Claimant: Isaac Fagbolagun	Appeal No.:	8914820
	S. S. No.:	
Employer: Dept. of Planning City of Baltimore ATTN : Howard Jackson	L O. No.:	1
	Appellant:	CLAIMANT

Issue:

Whether the claimant was discharged for gross misconduct, connected with his 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.

August 24, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

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### — APPEARANCES —

FOR THE CLAIMANT:

Isaac Fagbolagun, Claimant  
Stanley Herr, Attorney  
Mary Matanoski, Student Attorney  
Dr. John Belcher, Ph.D.

FOR THE EMPLOYER:

James Phillips,  
Esquire;  
Shirley Norris,  
Personnel Tech.;  
Amy Hasson,  
Admin. Officer

## EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

## PRELIMINARY STATEMENT

The basic facts of this case are not disputed. However, the decision as to whether or not the claimant should be entitled to unemployment benefits rests on the determination of whether or not the claimant's mental abilities were such that he was able to form the requisite intent needed to sustain a finding of gross misconduct.

## FINDINGS OF FACT

The claimant was employed by the City of Baltimore, Department of Planning, from October 6, 1987 until February 16, 1989. The claimant was employed in the position of a Planning Assistant II at the time of his termination.

Early in January of 1989, the claimant began to experience difficulties on the job. These difficulties involved missing time without calling in or seeking prior approval and problems with other co-workers.

On January 24, 1989, the claimant had a meeting with his immediate supervisor to discuss review work the claimant was doing. The claimant was unable to find drawings that were necessary for that meeting. The claimant was of the opinion that someone had taken them.

On January 25, the claimant failed to report for work and did not call in by 9:00 a.m., as is required by the Department. In fact, it became necessary for the supervisor to call the claimant's home when he had not heard from him by 10:00 a.m. During this conversation, it was decided that the claimant would take vacation time from January 26 to January 27. The next scheduled day for the claimant to appear for work was January 30. The claimant again failed to come in or call.

On February 1, the claimant was informed that he had not been awarded a promotion. On February 2, the claimant was found in the Director's office, standing behind the Director's desk. The claimant was not scheduled for a meeting with the Director and had no reason to be there. The claimant was asked numerous times to leave the Director's office and refused to do so. Due to the claimant's refusal to leave, it became necessary to call the police to have the claimant leave the Director's office.

As a result of the incidents on February 2, the claimant was scheduled for an appointment with the Employee Assistance Program on February 3. The claimant knew of this appointment, however, he failed to keep it. The claimant did not call to say he would not be able to keep the appointment. The claimant had also been scheduled to meet at 10:00 a.m. with Larry Wright, the Director of the Department of Planning, following his meeting with the Employee Assistance Program. The claimant did not appear at 10:00 a.m. for this meeting, however, he did show up at 12:00 Noon.

A meeting was held with the claimant on February 3 with both of the Assistant Directors and his supervisor. It was stressed to the claimant again the importance of keeping the appointment with the Employee Assistance Program and that he call in by 9:00 a.m. when he was not going to be able to be on time for work. Another appointment was made for the claimant with the Employee Assistance Program. This appointment was scheduled for Tuesday, February 7. The claimant failed to keep this appointment.

On Tuesday, February 7, the claimant appeared at the work place at approximately 3:00 p.m., again wanting to meet with the Director. The claimant was informed that he would not have a meeting with the Director until he attended the Employee Assistance Program. The claimant was informed that his meeting with the Employee Assistance Program was re-scheduled for Thursday at 9:00 a.m. The claimant again failed to attend this appointment.

In the course of two weeks the claimant, on four occasions, did not report for work and did not notify his supervisor by 9:00 a.m. that he was going to be out. Twice in one week the claimant was scheduled for appointments with the Employee Assistance Program and failed to appear for those appointments. The claimant was suspended without pay for three working days beginning Friday, February 10 until Wednesday, February 15. The claimant was instructed to return to work on Thursday, February 16 and 8:30 a.m. and to report to his supervisor. On February 16, the claimant again failed to appear for work or to call his supervisor to inform him of his absence or intention to return to work. As a result of this and the claimant's prior behavior, a notice of proposed discharge was acted upon. Subsequently, the claimant was in fact discharged.

These facts are not disputed by either party in this case. However, the Board must consider the claimant's state of mental health at the time these actions occurred.

Testimony was presented by both the claimant and Dr. John R. Belcher, Ph.D., regarding the claimant's mental state of health during the time period of the actions that led to his termination from employment. From February, 1989 until June, 1989, the claimant was suffering from Schizophrenia Form Psychosis. This type of Schizophrenia caused the claimant to suffer several manifestations of his illness. From February, 1989 until June, 1989 the claimant heard voices and suffered from acute depression. Diagnosis was confirmed when the claimant was committed to the Carter Center in June of 1989. This condition also caused the claimant to suffer severe paranoia. This explained the claimant's belief that fellow employees were following him and sabotaging his work and also that they had broken into his home. It would also cause the claimant to feel that his work place was a hostile environment. The claimant's illness caused him to act in an inappropriate manner, causing him to conduct himself as described in the facts above. The claimant, due to his mental illness, was not able to control these actions.

This type of mental illness can be treated with medication. The claimant was treated in June of 1989 while he was at the Carter Center. The nature of this illness also causes a person suffering from it, and therefore the claimant in this case, not to realize that their behavior and actions are inappropriate. They lose sense of reality. This type of schizophrenia normally lasts six months and then disappears never to return. The claimant is no longer on medication and is no longer suffering any of the manifestations of this disease.

#### CONCLUSIONS OF LAW

Section 6(b) of the Maryland Unemployment Insurance 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.

Essential to a finding of gross misconduct must be a finding that the claimant's actions were deliberate and willful or show a wanton disregard of the employee's responsibility. The Board has held in Burns v. Bethlehem Steel Corporation, 779-BH-82, that a claimant's emotional and psychiatric problems can be of such a severe nature as to preclude the claimant's ability to act deliberately or willfully or to show

a wanton disregard of his responsibilities. Emotional and psychiatric problems can be of such a nature as to cause the claimant to lack the requisite intent necessary for a finding of gross misconduct. Since all of the claimant's work problems were caused by severe mental illness, his discharge cannot be found to be caused by any misconduct at all.

Based upon the medical testimony and documentation presented in this case, the Board concludes that the claimant was suffering from a severe mental disorder, specifically Schizophrenic Form Psychosis. Due to this mental disability during the period of February to June, 1989, the claimant lacked the requisite intent necessary to establish a finding of gross misconduct. The claimant's condition in this case was even more severe and more debilitating than that found in Burns, supra.

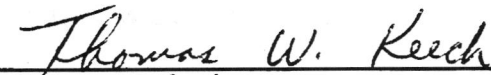
#### DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification shall be imposed for his separation from employment with the Baltimore City Department of Planning.

The decision of the Hearing Examiner is reversed.

The claimant may contact his local office regarding other requirements of the law.

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

  
\_\_\_\_\_  
Chairman

DW:K

kbm

Date of Hearing: May 22, 1990

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE -  
BALTIMORE

EMPLOYER

Ms. Mary Matanoski  
Stanley S. Herr, Attorney  
University of Maryland School of Law  
Clinical Law Office



# 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: January 3, 1990

Claimant: Isaac A. Fagbolagun

Appeal No.: 8914820

S. S. No.:

Employer: Dept. of Planning  
C/O Shirley Norris

LO. No.: 1

Appellant:

Claimant

Issue: 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

January 18, 1990

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

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### — APPEARANCES —

FOR THE CLAIMANT:

Isaac A. Fagbolagun - Claimant

FOR THE EMPLOYER:

Charles Spinner,  
Personnel Technician  
Civil Service  
Commission  
Amy Hasson,  
Administrative  
Officer Department  
of Planning

## FINDINGS OF FACT

The claimant was employed from October 6, 1987, as a Planning Assistant II at a pay rate of \$17,557.00 annually for full-time employment. The claimant was discharged effective March 20, 1989, because starting with February 16, 1989 he failed to report for work or notify his supervisor of either his absence or intention to return to work for three consecutive work days. Since this was a violation of both departmental (Planning Department) and City policy, he was dismissed. The employer had attempted to contact the claimant, in accordance with Civil Service regulations and when the claimant did not respond they discharged him.

The claimant had been suspended on February 9, 1989, for three days and was to return to work on February 16, 1989. The suspension was due to incidents on February 3, February 7, and 8, which concerned the claimant's unacceptable behavior and failure to keep an appointment with the Employees Assistance Program. Additional incidents occurred before the effective date of the claimant's discharge on March 20, 1989.

## CONCLUSIONS OF LAW

It is held that the claimant was discharged for gross misconduct connected with the work within the meaning and intend of Section 6(b) of the Maryland Unemployment Insurance Law. He will be disqualified under this provision of the Statute. The determination of the Claims Examiner which denied benefits to the claimant under Section 6(a) of the Maryland Unemployment Insurance Law will be reversed.

## 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. Benefits are denied for the week beginning March 19, 1989, until re-employed earning ten times his weekly benefit amount.

The determination of the Claims Examiner under provisions of  
Section 6(a) of the Law hereby reversed.

*P. J. Hackett*  
P. J. Hackett  
Hearing Examiner *rab*

Date of Hearing: December 22, 1989  
rab/ Specialist ID: 01036  
Cassette Number 1013 A-B  
Copies Mailed on January 3, 1990 to:  
    Claimant  
    Employer  
    Unemployment Insurance - Baltimore (MABS)