

 **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.: 752-BR-89

Date: September 1, 1989

Claimant: Osborne H. Bailey

Appeal No.: 8809792

S. S. No.:

Employer: Diesel Institute of America  
ATTN: Personnel

L O. No.; 50

Appellant EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the 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 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON October 1, 1989

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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 affirms the decision of the Hearing Examiner.

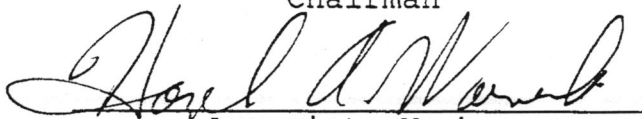
The Board notes that making of public statements about one's employer could constitute misconduct if the statements were untrue, or possibly if the statements were even technically accurate but made so much out of context that the net effect would be unfair harm to the employer. In this case, the employer has simply failed to meet its burden of showing that the statements in the television interview were untrue, or unfairly taken out of context. With regard to the newspaper article, the employer has not shown that the claimant made any of the derogatory remarks noted in the newspaper article. In fact, the article appears to be a paraphrase of statements made by the claimant's wife. Without any evidence either that the claimant made the remarks or that they were untrue or unfair, the employer has not met his burden with respect to the newspaper article either.

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 is imposed based upon the claimant's separation from employment with Diesel Institute of America. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is affirmed.

  
Chairman

  
Associate Member

K:H

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Patricia Connely, Esquire  
Bulman, Dunie, Burke & Feld

OUT-OF-STATE CLAIMS

 **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) 333-5033*

DATE: February 9, 1989

CLAIMANT: Osborne H. Bailey

APPEAL NO.: 8809792

S. S. NO.:

EMPLOYER: Diesel Institute of America  
ATTN: Personnel

L. O. NO.: 50

APPELLANT: EMPLOYER

Your request for an appeal from the Hearing Examiner's decision dated 12/30/88 has been received by the Board of Appeals.

The Maryland Unemployment Insurance Law provides that appeals in such matters must be filed within fifteen days of said decision. The last day for filing an appeal in your case was 01/17/89 and since your request was not made until 01/18/89 the Board has no authority to grant the appeal which you request.

YOU may file an appeal on or before the date below stated, in person or through an attorney, to the Circuit Court for Baltimore City or the Circuit Court of the County in Maryland in which you reside.

The period for filing an appeal to court expires at midnight, March 11, 1989.



Associate Member



Associate Member

H:D

nb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Patricia Connelly, Esquire

OUT-OF-STATE CLAIMS

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 283-5048

STATE OF MARYLAND  
WILLIAM DEMME SERAPINE  
Governor

- DECISION -

Mailed: 12/30/88

Osborne H. Bailey  
Claimant:

Date: 8809792-EP

Appeal No.:

S. S. No.:

Diesel Institute of America  
Employer:

50

L.O. No.:

Employer

Appellant:

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 TO PETITION FOR REVIEW -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SEC OFFICE OR WITH THE APPEALS DIVISION, ROOM 818, 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

1/17/89

NOTICE APPEALS FILED BY MAIL, INCLUDING SELF-METTERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

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- APPEARANCES -

FOR THE CLAIMANT:

Claimant-Present  
Michael Rowe,  
William Leonard,  
George McGill,  
Gerald Mills, Witnesses

FOR THE EMPLOYER:

Sheldon E. Monsein,  
Patricia Connelly,  
Esquire  
Ann Gwinn, Observer  
of US Dept. of Labor

FINDINGS OF FACT

At the time of the hearing on December 1, 1988, the claimant attempted to place into evidence a video cassette recording of a news broadcast which was the prime reason for his separation from the employment. The claimant was unable to get his video equipment to function properly in order to demonstrate the news broadcast and to put the recording into evidence. Although a transcript of the recording was later placed into the record by the employer at the conclusion of the case the Hearing Examiner

granted a continuance in order to allow preparation of copies of the video cassette which would be entered as an exhibit and a copy provided to the employer's counsel.

No cassette was received by the Appeals Division by December 22, 1988. Therefore, there being an entirely reasonable and adequate time in which to present this evidence, a decision was rendered on the evidence and testimony placed in the record at the hearing on December 1, 1988.

The claimant had worked for the employer of record for approximately two years prior to his discharge on July 11, 1988, from his position as Senior Driving Instructor.

The precipitating cause of the claimant's discharge was his participation in a television news broadcast aired on WJLA television (Washington, DC) in which the claimant and other persons were interviewed concerning safety standards, conditions of equipment and the general operation of the employer trading as "Diesel Institute of America Incorporated." The television coverage was with the knowledge and consent of the employer and employees are asked to cooperate with the television crew. Based upon the transcript of the interview (employer's exhibit #2) the claimant's participation in the television presentation was minimal. In one segment he describes the reality of teaching manual gear shifting to new students and the need for double clutching a tractor trailer truck. In another segment he reiterates the employer's policy of avoiding way stations on heavily travelled routes, a policy ostensibly intended to prevent undue waiting. The claimant was chastised on at least one occasion for taking a student trucking class through a way station, where inspection of the equipment might be made. The claimant also discussed emergency situations in which he might have to jump across the cab of the truck to regain control of the truck in the hands of the student unable to control it.

The claimant was immediately dismissed for the following presentation of the television news program ostensibly because the employer felt his comments to be contrary to the employer's best interest.

#### CONCLUSIONS OF LAW

A detailed review of the transcript does not reveal more than brief and routine observations by the claimant and no willful malicious or untrue statements made by the claimant. The claimant had been made aware of the interview, had been asked to cooperate with the television crew and did so.

Gross misconduct is defined in the Law as "a deliberate and willful disregard of standards of behavior which the employer has the right to expect showing a gross indifference to the employer's interest or a series of repeated violations of the employment rules proving that the employee has regularly and wantonly disregarded his obligations."

In Rogers v. Radio Shack, 271 Md. 126, 314 Atlantic 2nd 113, the Maryland Court of Appeals adopted a judicial definition of misconduct within the meaning of Section 6(c) which effectively defines misconduct as "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."

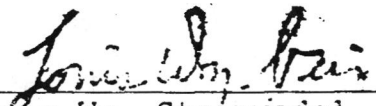
The record in this case does not demonstrate conduct by the claimant which meets either the Statutory definition of gross misconduct within the meaning of Section 6(b) or the judicial definition of misconduct, within the meaning of Section 6(c) of the Law.

Therefore, the determination of the Claims Examiner shall not be disturbed:

DECISION

It is held that 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 is imposed based upon the claimant's separation from his employment Diesel Institute of America, Incorporated. The claimant may contact his local office concerning other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.

  
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Louis Wm. Steinwedel  
Deputy Hearing Examiner

Date of hearing: 12/1/88

rc

(7862 & 7854)-Specialist ID: 50524

Copies mailed on 12/30/88 to:

Claimant  
Employer  
Out of State Claims - MABS

Patricia Connelly  
Attorney At Law