



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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Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 785-BH-84

Date: September 24, 1984

Claimant: Gail E. Tawney

Appeal No.: 01965 & 00872

S. S. No.:

Employer: Continental Plastics

L.O. No.: 40

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §6(b) or §6(c) of the law and whether the claimant filed a timely and valid appeal, within the meaning of §7(c) (ii) 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 October 24, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Gail E. Tawney - Claimant
John Eidleman - Attorney

FOR THE EMPLOYER:

Aaron Shapiro -
Attorney
Fleming Scott -
Human Resources
Supervisor

EVIDENCE CONSIDERED

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 into this case, as well as Department of Employment & Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed by Continental Plastics as a utility worker for approximately six years. In January or February, 1983, the claimant was discharged due to her record of frequent absences. Most of these absences were due to the claimant having to attend her minor child, who suffered from chronic bronchial asthma. The claimant was reinstated on February 29, 1983 and placed on probation.

In May, 1983, the claimant was given a three day suspension for lateness.

On or about August 16, 1983, the claimant was called away from work because her daughter (who was then six years old) was suddenly hospitalized. The claimant understood her daughter's condition to be very serious at the time that she left the office. Nevertheless, as a result of this absenteeism, the claimant was discharged.

On or about September 26, 1983, the claimant applied for unemployment insurance benefits but subsequently received a non-monetary determination which disqualified her for benefits until she earned ten times her weekly benefit amount. In the meantime, the claimant was reinstated to her job on September 18, 1983 due to a grievance she had filed through her union. However, she continued to be on probation at her employment.

The claimant contacted her local unemployment insurance office with regard to her reinstatement and its effect on her claim, and was informed by an employee of the agency that she did not have to appeal any further since she had been reinstated. Therefore, the claimant did not appeal that initial determination disqualifying her, at that time.

Under the terms of the claimant's reinstatement and probation, she could not have any more incidents of lateness or unexcused absences for twelve months. On or about September 21, 1983, the car that the claimant was riding to work in broke down en route. She immediately contacted her employer who told her to get to work as soon as possible. The claimant was approximately one half hour late and was discharged as a result of this incident.

The claimant subsequently refiled for unemployment insurance benefits in January, 1984. At that time she was told she would have to pursue her original claim as well because of the outstanding disqualification, and so she filed an appeal on January 13, 1984 to the initial claims examiner's determination, approximately four months after the last date to file the appeal had expired.

CONCLUSIONS OF LAW

Since the claimant filed two claims for unemployment insurance benefits, one for her separation in August, 1983 and one for her separation in September, 1983 and since there are two separate Appeals Referee's decisions, the Board will discuss the legal conclusions for each claim separately.

Appeal number 00872:

This appeal resulted from the claimant's initial claim for benefits in August 1983. Since the claimant dropped this claim after her reinstatement, until January 13, 1984, almost four months after the last date to file an appeal, the first issue to be decided is whether the claimant had good cause to file this late appeal pursuant to §7(c) (ii) of the law.

The Board concludes that the claimant does have good cause. The undisputed testimony is that agency personnel told the claimant that she did not have to pursue her claim any further due to her reinstatement, despite the maximum disqualification. The claimant reasonably relied on this information and therefore did not file her appeal until January, 1984, after she filed a new claim and was told that her original disqualification was still outstanding.

With regard to the merits of the claimant's first disqualification, the Board concludes that the claimant was discharged on August 16, 1983 for actions that do not constitute either misconduct or gross misconduct.

The claimant was called away from work due to the emergency hospitalization of her young child. Although the Board understands that this created a hardship for the employer, it cannot conclude that the claimant's action was misconduct in any sense of that term. The fact that the claimant's husband was at the hospital with her child is beside the point. The claimant's need to be with her six year old child who was hospitalized and in serious condition speaks for itself.

Appeal number 01965:

This appeal resulted from the claimant's second claim for unemployment insurance benefits filed in January, 1984, as a result of her second discharge on September 21, 1983.

The Board concludes that the claimant's action which resulted in her discharge was not misconduct or gross misconduct within the meaning of §6(c) or §6(b) of the law.

The undisputed testimony of the claimant is that the car she was riding in broke down and that she called the employer and arrived at work as soon as possible. These circumstances were clearly beyond the claimant's control. Even looking at the claimant's record as a whole, the Board concludes that the claimant's absences were due primarily to her daughter's illness and the claimant always notified the employer whenever possible. Therefore the decision of the Appeals Referee with regard to this appeal will be affirmed.

DECISION

In Appeal number 00872, the claimant had good cause to file an untimely appeal within the meaning of §7(c) (ii) of the law.

The claimant was discharged but not for gross misconduct or misconduct, connected with the work, within the meaning of §6(b) or §6(c) of the law. No disqualification is imposed based upon her separation from employment with Continental Plastics. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Appeals Referee is reversed.

In Appeal number 01965, the claimant was discharged but not for gross misconduct or misconduct, connected with the work, within the meaning of §6(b) or §6(c) of the law. No disqualification is imposed based upon the claimant's separation from employment with Continental Plastics. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Appeals Referee is affirmed.


Associate Member


Associate Member

CONCURRING OPINION

I concur in the result reached in this case. The claimant's absences were entirely due to the illness of her child. She always notified the employer of her absences. After a warning about the fact that she was missing work on too many occasions, she made alternative arrangements which virtually eliminated the necessity for her missing time. Only in an unusual emergency situation would she have to take time off from work. When one such emergency occurred five to seven months later, she was fired. She was reinstated, then fired when a co-worker's car broke down. I agree that no misconduct has been proven in the circumstances of this case.


Chairman

kmb

DATE OF HEARING: July 10, 1984



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
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 Hearings Examiner

- DECISION -

CLAIMANT: Gail E. Tawney
 EMPLOYER: Continental Plastics
 DATE: March 27, 1984
 APPEAL NO.: 01965
 S.S. No.:
 L.O. No.: 40
 APPELLANT: Claimant

ISSUE: Whether the claimant was discharged for gross misconduct. connected with the work within the meaning of Section 6(b) 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 AN APPEAL EXPIRES AT MIDNIGHT ON October 24, 1984

- APPEARANCES -

FOR THE CLAIMANT: Gail E. Tawney - Claimant
 FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant began working for the employer as a full-time utility worker on September 13, 1977. She was discharged on August 19, 1983 and reinstated on September 18, 1983. She was fired for the second time on September 21, 1983 for lateness. She had been reinstated upon filing a union grievance.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John C. Eidleman, Esquire
Legal Aid Bureau, Inc.
Suite 118

Aaron W. Shapiro, Esquire
at

Reed Roberts Associates

UNEMPLOYMENT INSURANCE - EASTPOINT

The testimony reveals that the claimant did have an absenteeism problem due to a medical condition of her daughter, known as chronic bronchial asthma. Whenever the child gets an attack, she has to be taken to the hospital by her mother, who is separated from her husband, or the mother would have to be summons from work.

On August 19, 1983, the claimant, who had been placed on a twelve-month probationary period, was fired after receiving a telephone call at work that her daughter was in critical condition and the claimant left her employment to go to the hospital at 3:30 to be with her daughter. For that, she was suspended and then terminated. After filing a grievance through her union, the claimant was rehired on September 18, 1983.

On September 21, 1983 while driving to work with a rider, the car broke down on Eastern Avenue. The claimant punched in thirteen minutes late due to the car breaking down. The claimant was due to have a meeting with the employer on September 26, 1983 to discuss the terms of any probation, if such probation were to be imposed. However, the meeting never took place because the claimant was Germinated on September 21, 1983.

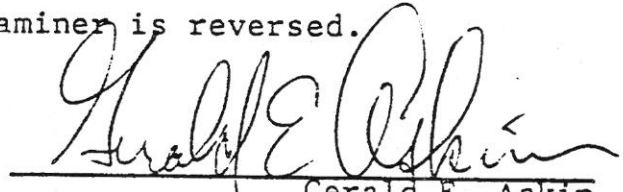
CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, is not supported by the testimony before the Appeals Referee. This Section of the Law provides that gross misconduct shall include conduct of an employee, which is a series of repeated violations of employment rules, proving that the employee has regularly and wantonly disregarded her obligations to the employer. In the instant appeal, the claimant's absenteeism was totally due to the illness of her daughter who suffers from chronic bronchial asthma. The employer was aware of the claimant's problems, and even though the employer's rules may have been broken, there was no willful conduct on the part of the claimant, as her absenteeism was due either to her daughter's illness or the breakdown of the car, which caused her to be thirteen minutes late and precipitated her discharge. It is for this reason the determination of the Claims Examiner must be reversed.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with Continental Plastics. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.


Gerald E. Askin
APPEALS REFEREE

DATE OF HEARING: March 14, 1984

ras

(1803 -- Vidler)

copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint



STATE OF MARYLAND
 HARRY HUGHES
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MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Gail E. Tawney

DATE: Mar. 27, 1984

APPEAL NO.: 00872

S. S. NO.:

EMPLOYER: Continental Plastics

L. O. NO.: 40

APPELLANT: Claimant

ISSUE: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Law.
 Whether the appealing party filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c) (ii) 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 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 April 11, 1984

-APPEARANCES -

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Aaron W. Shapiro,
 Esquire

FINDINGS OF FACT

On September 13, 1983, the claimant was disqualified from receiving unemployment insurance benefits under Section 6(b) of the Law for the week beginning August 14, 1983 until she becomes

reemployed and earns at least ten times her weekly benefit amount (\$1600). The last day to file an appeal was plainly stated to be September 28, 1983. The claimant did not file her appeal until January 13, 1984. The claimant states she did not file her appeal by the twenty-eighth because she returned to work on September 18 for approximately four days, pending a final ruling in her case. The claimant became unemployed again then on the twenty-second of September and still failed to file her appeal by September 28, the deadline set within the Notice of Benefit Determination.

The claimant was earning \$7.50 per hour as a Utility Worker at the time of separation from employment. She had worked at Continental Plastics from September 13, 1977 until her discharge on August 14, 1983. She again returned for four days while procedures were being carried out under union contract concerning her discharge. Her last day of work after working the four days was September 18, 1983.

The claimant was discharged because of excessive absenteeism. She had received one verbal warning and at least one written warning concerning her absenteeism. She had received suspensions from work for absenteeism on February 1 and May 9, 1983.

She had been given two letters telling her that further absenteeism could result in her discharge. The claimant, on her last day of employment, left her work early without obtaining proper approval. The claimant had spoken to her shop steward in her union, and was told to leave by the shop steward, but to return with a medical statement. The claimant's reason for leaving was that she had received an emergency call concerning her daughter who was ill and in the hospital. The call that she received was of an extreme emergency nature.

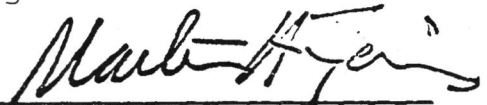
CONCLUSIONS OF LAW

The claimant failed, without a good cause to file a timely appeal within the meaning of Section 7(c) (ii). The claimant received a disqualification in September, telling her that the last day to file an appeal was September 28, and she has no understandable reason for failing to file an appeal prior to that time. The claimant, as a member of the union, is filing a grievance procedure, had advice available to her and was clearly unemployed and had no reason to delay filing her appeal until January of 1984. This failure on the part of the claimant to file a timely appeal deprives the Appeals Referee of jurisdiction to determine the appeal on its merits.

DECISION

The claimant failed, without good cause, to file a timely appeal within the meaning of Section 7(c) (ii).

The determination of the Claims Examiner disqualifying the claimant from receipt of unemployment insurance benefits under Section 6(b) of the Law from the week beginning August 14, 1983 and until she becomes reemployed, earns at least ten times the weekly benefit amount (\$1600), and thereafter becomes unemployed through no fault of her own, remains unchanged.



Martin A. Ferris
APPEALS REFEREE

Date of hearing: March 12, 1984

Cassette: 1698

hf (Mara)

COPIES MAILED TO:

Claimant
Employer
Unemployment Insurance-Eastpoint

Aaron W. Shapiro, Esquire

Continental Plastics
c/o Reed Roberts Inc.