



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.:	785-BR-91
	Date:	July 3, 1991
Claimant:	Appeal No.:	9104052
	S. S. No.:	
Employer:	L.O. No.:	40
	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 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES August 2, 1991

— APPEARANCES —

FOR THE CLAIMANT:	FOR THE EMPLOYER:
	REVIEW ON THE RECORD

Upon review of the record<sup>1</sup> in this case, the Board of Appeals

<sup>1</sup> The tape recording of this hearing was very difficult to hear, but was sufficiently audible for the Board to understand this testimony.

reverses the decision of the Hearing Examiner.

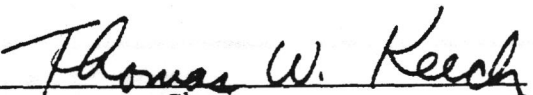
The Board adopts the findings of fact of the Hearing Examiner. Based on these facts, the Board concludes that the claimant was discharged for misconduct, within the meaning of Section 6(c) of the law. Although the employer did not bring adequately detailed records to the hearing, the facts admitted to by the claimant amount to misconduct in themselves.

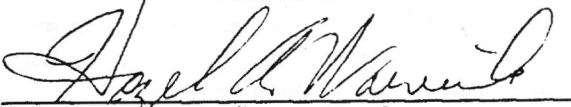
In making this conclusion, the Board is not relying on the claimant's unexcused absence. The claimant appears to have had a compelling personal reason to be absent, and also to have provided at least some type of documentary evidence of the excuse. The claimant, however, was also late four times without excuse. Her last lateness was for only seven minutes, but it came after repeated counseling and warnings about lateness. The claimant's reason for this lateness, that her alarm clock did not always work, was not something that was beyond her control, in the greater scheme of things. The claimant's lateness thus amounts to ordinary misconduct within the meaning of Section 6(c) 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. She is disqualified from receiving benefits from the week beginning July 22, 1990 and the four weeks ending August 25, 1990.

The decision of the Hearing Examiner is reversed. The original decision of the Claims Examiner is reinstated.

  
\_\_\_\_\_  
Chairman

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

K:H  
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER  
UNEMPLOYMENT INSURANCE - EASTPOINT

 **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*

**— D E C I S I O N —**

Claimant:	Tammy B. Martin	Date:	Mailed 4/24/91
		Appeal No.:	9104052
		S. S. No.:	
Employer:	TABS Associates, Inc.	L.O. No.:	40
		Appellant:	Claimant

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 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.

May 9, 1991

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

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**— A P P E A R A N C E S —**

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Dawn  
Rekoski, Manager

**FINDINGS OF FACT**

The claimant began her job as a mail clerk on January 8, 1990; her last day of work was July 27, 1990. She earned \$4.00 an hour. She was fired for being seven minutes late; pursuant to the employer's attendance policy (employer's Exhibit #1), the

claimant had been placed on probation for being late. The employer could not recall the precise date of the claimant's latenesses; the employer did recall, however, that they could have been anywhere from one minute to ten minutes. The employer recalled no instance where this claimant was late by more than ten minutes.

The claimant, however, had failed to report to work one day. Pursuant to the attendance policy, the claimant asked for this time off, four days before she had to leave. The claimant felt it was necessary for her to return to her home in West Virginia, because her mother was having breast surgery. She was told that her absence would be unacceptable, unless she was able to obtain a doctor's note from her mother's physician. Because of the stress at home, due to her mother's pending surgery, the claimant was unable to get a note from her mother's surgeon stating that the claimant's presence as a daughter was necessary to her mother's recovery. She did, however, obtain a note from her mother. Her employer informed her that the note from her mother was simply not sufficient. On the next occasion when the claimant was seven minutes late, she was fired. The claimant's failure to obtain a note from her mother's surgeon counted as an unexcused absence. It is the employer's position that, because of its attendance policy that it was essential to fire the claimant and the note from the claimant's mother in West Virginia testifying to her surgery and her emotional need for her daughter was simply not sufficient.

#### CONCLUSIONS OF LAW

It has been held that as a condition of employment, an employer has the right to expect his workers to report to work regularly, on time, and as scheduled; and in the event of an unavoidable detention or emergency, to receive prompt notification thereof. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). Failure to meet this standard amounts to misconduct.

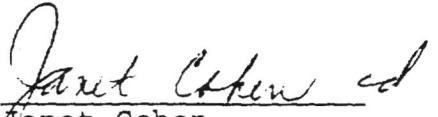
Here, however, the claimant would not have been fired in absence of her taking the time to be with her mother in West Virginia for her mother's surgery. It has often been pointed out that whatever an employer's attendance policy is, Maryland Law is what controls in these cases; simply put, what is misconduct under an employer's attendance policy may not necessarily be misconduct under Maryland Law. Certainly, four days' notice was prompt notification. The claimant did return with what she considered to be appropriate documentation. To count this as an unexcused absence and fire this claimant for a subsequent seven-minute lateness is unduly harsh. Supporting this conclusion is the fact

that the employer expressed no doubt whatsoever that the claimant had, indeed, been with her mother in West Virginia during her mother's surgery. It was simply a matter of whether the note was signed by the claimant's mother or the mother's physician.

DECISION

The claimant was discharged, but not for misconduct connected with the work within the meaning of Section 6 (c) of the Law. No disqualification is imposed, based on her separation from employment with TABS Associates, Incorporated. The claimant should contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

  
Janet Cohen  
Hearing Examiner

Date of Hearing: 3/28/91  
cd/Cassette #3152  
Specialist ID: 40310

COPIES MAILED ON 4/24/91 TO:

Claimant  
Employer  
Unemployment Insurance - Eastpoint (MABS)