Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

— DECISION —

Decision No.: 793-BR-88

Date: Sept. 2, 1988

Claimant: J. William Greenwood

Appeal No.: 8806253

S. S. No.:

Employer: Royal Crown Bottling Co.
c/o ADP
ATTN: Gayle Gray Turek

L. O. No.: 50

Appellant: CLAIMANT

Issue:

Whether the claimant was discharged for gross misconduct or misconduct connected with his work, within the meaning of Section 6(b) or 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 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 2, 1988

— 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 and concludes that the employer has failed to prove that the claimant was discharged for gross misconduct within the meaning of Section 6(b) of the law.

Where a claimant has been discharged, the employer has the burden of showing that the discharge was for gross misconduct or misconduct within the meaning o of Section 6(b) or 6(c). See, Finn v. Sheraton Washington Hotel, 89-BR-85. The employer has shown that the claimant did not use good judgement but has failed to prove this was due either to the claimant's negligence or deliberate efforts to disregard the employer's interest; therefore, the employer has failed to prove misconduct. See, Ellis v. Lana Fab Corporation, 497-BH-85 (claimant's inability to perform her work to her employer's expectation does not constitute misconduct); see also, Keller v. Eastport International, 264-BH-85.

The claimant made a judgment concerning the proper carbonation level in three separate incidents, all of which resulted in loss to the employer. The first incident, involving root beer, occurred some time prior to the claimant's separation and the evidence on that issue is rather vague.

The second incident, which occurred on September 1, 1987, was a result of the claimant's attempt to solve a foaming problem. The claimant believed he was acting within authorized guidelines and attempted to use his best judgment. Even if he did not have the specific authorization of the vice president to lower the carbon dioxide level, he believed the level he authorized was permissible, and the failure of the product shows a lack of judgment but not misconduct.

The final incident, concerning wine coolers, was also the result of a lack of good judgment and not misconduct.

In reaching these conclusions, the Board is influenced by the fact, fully admitted by the employer, that when the claimant was discharged, he was only told that the employer was reorganizing and needed "a more mechanical person" in his job. This was also the original explanation given by the employer to the Claims Examiner.

Therefore, the decision of the Hearing Examiner is reversed.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from employment with the Royal Crown Bottling Company.

The decision of the Hearing Examiner is reversed.

Associate Member

Chairman

HW:K
kbm
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CLAIMANT
EMPLOYER
OUT-OF-STATE CLAIMS

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

– DECISION –

Date: Mailed July 12, 1988

Claimant: J. W. Greenwood

Appeal No.: 8806253

S.S. No.:

Employer: Royal Crown Bottling Company
c/o ADP/UCM Department

L.O. No.: 50

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 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 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON July 27, 1988
NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

—APPEARANCE—

FOR THE CLAIMANT:

Present - via telephone 6/29/88

FOR THE EMPLOYER:

William Martin, President; and Gayle Gray - Turek, Automatic Data Processing

FINDINGS OF FACT

The claimant was employed by Royal Crown Bottling Company from May 15, 1987 until his last day of work, when he was discharged April 8, 1988. The claimant was a plant manager, earning $961.00 a week.

The claimant, on September 1, 1987, changed the standards of Vintage Carbonation for seltzer water. The standards call for a

carbonation of 4.5 to 4.9. Thus, the target was 4.7. The claimant initialed an okay to run a ten-ounce glass at 4.2. This was because of a foaming problem.

The claimant had at least 20 years experience in the bottling business and had faced this situation thousands of times. The employer delivered over 10,000 cases to seven supermarkets in Philadelphia. The supermarkets reported that the item was flat and returned the cases. This caused the employer approximately $30,000 1oss, plus a fee of $.75 per ease for disposal of the cases in Richmond, Virginia. This was required because Maryland prohibits this type of liquid product to be dumped within the State.

Only the parent company make specifications for the product. In this case, the parent company was the employer themselves. The local branch where the claimant worked did not have authority to change any specifications.

The claimant alleged that the president okayed the change, but the president categorically denied this.

On February 11, 1988, there was a production of root beer and this product, again, had to be dumped, because of a technical failure due to the claimant. Just before the claimant was discharged, the employer was processing and making wine coolers for the Seagram's Corporation. This took approximately three and one-half to four hours. There were six or seven employees responsible for quality control and the employer's procedure was that the product was to be checked every one-half an hour. The product was shipped out under the claimant's authority and jurisdiction. The Seagram's Corporation at White Plains, New York checked a lab sampler and found that the product unsealable. As a result of this, the Seagram's Corporation back-billed the employer $21,840.00 for 3,660 cases and the expenses to dump this was $4,475.00.

The claimant was discharged by the employer principally for the failure of the claimant to meet specification on the seltzer water and the wine cooler incident.

CONCLUSIONS OF LAW

In the case of Worthan v. City of Baltimore, 732-BR-83, the Board of Appeals held that the claimant, operations technician on three separate occasions, negligently performed his job duties causing damages and chemical spillage; claimant was warned. Held, claimant's repeted negligence constitutes a series of repeated violations of employment rules and constitutes gross misconduct.

In the case at hand, the claimant was responsible for three series of technical errors which caused the employer a considerable, financial loss of over $40,000.00. His conduct and failure to follow the correct procedures must be considered to be a deliberate and willful disregard of standards which the employer has a right to expect and constitutes gross misconduct connected with the work. The determination of the Claims Examiner must be reversed.

DECISION

The claimant was discharged for gross misconduct connected with the work within the meaning of Section 6 (b) of the Law. Benefits are denied for the week beginning April 3, 1988 and thereafter becomes re-employed, earns at least ten times his weekly benefit amount ($1950), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.
HEARING EXAMINER

DATE OF HEARING - 6/29/88
cd
3219/Keller

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Claimant
Employer
Out of State Claims (MABS)

Automatic Data Processing
ATTN: Gayle Gray-Turek