



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.: 8-BH-87

Date: Jan. 8, 1987

Claimant: Ralph Willett

Appeal No.: 8608096

S. S. No.:

Employer: Civil Service Commission

L.O. No.: 45

Appellant: EMPLOYER

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 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

February 7, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Ralph Willett

FOR THE EMPLOYER:

Charlie Spinner,
Personnel Tech.;
Tyrone Wallace,
Acting Executive
Secretary

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 Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a full-time firefighter with the City of Baltimore from April 2, 1984 until he was discharged, effective on or about May 14, 1986. The claimant had a history of arrests, some of which he had previously tried to conceal from his employer while he was still in the firefighter's academy. Although he was recommended as unacceptable in the academy, he was allowed to go back and complete his training and continue with the employer at that time, in settlement of a discrimination complaint that he had filed.

On or about March 7, 1986, the claimant was arrested on fire department premises and charged with two counts of theft, one for shoplifting and one for possession of a stolen credit card. The incidents that these arrests stemmed from had occurred on January 1, 1986 and March 4, 1986 respectively. The claimant was subsequently convicted of possession of a stolen credit card after pleading guilty. He was given 18 months' suspended sentence and 18 months' supervised probation. As a result, he was discharged by the employer.

In the course of his duties as a firefighter, the claimant from time to time would be required to enter the homes of private citizens and have complete access to them. His entire personnel record was considered at the time of his termination. This included a long history of violations of employer rules. The Board does not find as a fact that the claimant was either harassed or discriminated against by the employer.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant in this case was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Although the incident for which the claimant was arrested, subsequently pleaded guilty and was convicted did not occur during his hours of employment or on the employer's premises, it is sufficiently connected with his work. The requirement of being "connected with the work" and what it means has been discussed in great length by the Board in several recent cases. In Todd v. Threshold, Inc., 302-BH-85, the Board made the following conclusions:

In order to meet the "connected with the work" requirement, misconduct in these cases must be incident to the work or directly related to the employment status. The mere fact that the misconduct adversely affects the employer's interest is not enough. Fino v. Maryland Employment Security Board, 218 Md. 504 (1969). An essential prerequisite in order to make an act connected with the work is that it be a breach of duty to the employer. Employment Security Board v. LeCates, 218 Md. 202 (1958). In the two cases cited above, the Court of Appeals discussed at length what is connected with the work within the meaning of Section 6 of the Maryland Unemployment Insurance Law. Some of the questions left unanswered by those cases (but subsequently addressed by the Board) are whether off-duty statutory violations by police officers and public officials constitute misconduct connected with the work. In Johnson v. Baltimore City Police Department (952-BH-83), the Board held that an off-duty police officer's commission of a statutory violation which showed moral turpitude was a breach of duty to the employer. The Board reasoned that a police officer has a continuing duty to refrain from committing such violations. In the case of correctional officers, the Board has held that while their duty to refrain from committing criminal acts while off duty may not be as compelling as that of a police officer, there is a duty, connected with the work, to refrain from at least those criminal activities which are related by their very nature to the job duties of the correctional officer. Skelton v. Maryland House of Correction (111-BR-84).

On the other hand, the Board has found criminal offenses, even drug related offenses, not to be connected with the work in the case of a drop hammer operator for a private employer. Thompson v. Martin Marietta (142-BH-83). Likewise, the Board found that conviction for sexual offenses was not connected with the work of an obscure governmental typist. Hubatka v. Dept. of Health and Human Services (1-BH-83).

In the Todd case, the Board concluded that "the claimant's position as a security officer in a facility which was closely monitoring the activities of inmates was a position of trust in which his own integrity and avoidance of criminal actions did become relevant to his daily work place." The Board concluded there that the claimant, who was discharged when his drug test came back with a positive result for marijuana, had breached a duty to his employer, even though there was no proof whether he had used the drugs on or off the work premises or during work hours, and concluded that he was discharged for gross misconduct.

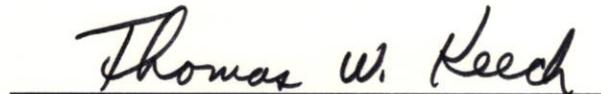
The case before the Board here involves a public official, a firefighter. There is no recent Board decision dealing specifically with the duties of firefighters, but the Board concludes that they are somewhat comparable to that of a correction officer, where there is a strong duty to refrain from criminal acts, but not quite as compelling as that of a police officer. The duty to refrain from off-duty criminal activity is even stronger for a firefighter than a correctional officer because firefighters are frequently in a position where they must be trusted to go into people's houses and to ride along with injured parties in ambulances. Under these circumstances, they have a tremendous opportunity to commit illegal acts, and the Board concludes that an even greater degree of trust is required of a firefighter than for a correctional officer. Therefore, a firefighter's commission of a crime of theft, even while off duty, is a breach of his duty to his employer and is gross misconduct connected with his work within the meaning of Section 6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 11, 1986 and until he becomes reemployed, earns ten times his weekly benefit amount (\$1,950) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K
kbm

Date of Hearing: November 19, 1986

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EMPLOYER
UNEMPLOYMENT INSURANCE - NORTHWEST



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MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed: August 27, 1986

Claimant: Ralph A. Willett

Appeal No.: 8608096

S. S. No.: _____

Employer: Civil Service Commissioner

L.O. No.: 45

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with his work within the meaning of Section 6(c) of the Law. Whether the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) 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 September 11, 1986

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Ralph A. Willett - Claimant

Charles Spinner - Personnel
Technician IV
Tyrone W. Wallace - Acting
Executive Secretary

FINDINGS OF FACT

The claimant began working for the employer, Board of Fire Commissioners of Baltimore City, as a full time firefighter April 2, 1984. He was discharged effective May 14, 1986 for alleged violations of Fire Department Rules and Regulations.

The testimony reveals that on March 7, 1986, the claimant was arrested on fire department property by Baltimore City Police and charged with two counts of theft, one occurring on January 1, 1986

and the other on March 4, 1986. The claimant was subsequently found guilty in the Circuit Court of Baltimore for processing a stolen credit card and given an 18 month suspended sentence and 18 months probation.

The hearing examiner finds this fact that any misconduct on the part of the claimant as to his conviction in the Circuit Court of Baltimore City is not work connected. In addition, the hearing examiner finds this fact that the claimant did violate certain rules and regulations of the Baltimore City Board of Fire Commissioners by violating Article 41:00.

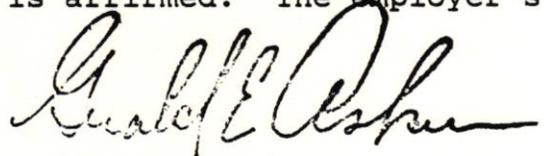
CONCLUSIONS OF LAW

The non-monetary determination of the claims examiner that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law is supported by the testimony of the claimant and the employer. The claimant clearly violated certain fire department rules and regulations in his relationship with his superior officers. However, the hearing examiner does not conclude that the claimant's conduct in being arrested and convicted of the theft of credit cards is cause for the denial of benefits to the claimant under the provisions of Section 6(b) of the Maryland Unemployment Insurance Law for gross misconduct because it is the considered opinion of the hearing examiner that such criminal activity was not work connected. It is for this reason the determination of the claims examiner shall be affirmed.

DECISION

The claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning May 11, 1986 and the nine weeks immediately following.

The determination of the claims examiner is affirmed. The employer's protest is denied.



Gerald E. Askin
Hearing Examiner

Dated of Hearing: August 5, 1986
mtr
(Y. Holcomb)

Copies mailed on August 27, 1986 to:

- Claimant
- Employer
- Unemployment Insurance - Northwest Office