

**File:** C:\WINDOWS\Desktop\Conversion\0800-87.pdf

**Pages:** 1 to 7 of 7

Document Body Page Navigation Panel

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**BOARD OF APPEALS**

**— DECISION —**

**Decision No.:** 800-BH-87

**Date:** Nov. 12, 1987

**Claimant:** William Gordon

**Appeal No.:** 8706945

**Employer:** Liberty Medical Center,  
Inc.  
c/o The Gibbens Company

**L.O. No.:** 15

**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 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 December 12, 1987

**— APPEARANCES —**

**FOR THE CLAIMANT:**

William Gordon

**FOR THE EMPLOYER:**

Martha Young,  
Gibbens Company;  
Fred Stanton  
Witness

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**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 Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed by Liberty Medical Center, formerly Provident Hospital, as an addiction counselor, from approximately June 1, 1986 until he was discharged on or about October 20, 1986.

Almost from the very beginning, the claimant had an attendance problem, caused in great part by serious personal problems. The claimant had a daughter who was terminally ill at the time, and as a result he frequently needed time off from work to be with her, especially when she was hospitalized. The employer understood this problem and tried to work with the claimant. The employer's main concern was that the claimant notify the employer when he had to leave early or when he could not report to work because of his daughter's illness. In addition to the time that the claimant had to spend with his daughter, he also experienced severe stress himself and occasional drinking problems at work, that were exacerbated by this personal problem.

On several occasions, the claimant's supervisor had to warn him for not calling when he couldn't make it to work, but the employer continued to try to help the claimant and give him whatever time he needed with his daughter. The supervisor also personally counseled the claimant and also referred him to the medical director of the facility for counseling. The claimant, on his own, was seeing a psychiatrist at University Hospital.

On October 6, 1986, his daughter took a turn for the worse and had to be hospitalized. The claimant consequently failed to report to work on October 6th or 7th and failed to call the employer. At that time he was so involved with his daughter's worsening condition and so distressed that he could not think about calling. He did report to work on October 10th and was given a written reprimand for failing to call in.

As a result of his increasing depression over his daughter's condition, the claimant was advised by his psychiatrist to seek hospitalization. On October 20th he did not report to work; at that time his doctor was attempting to get him into a hospital. When he failed to report and the employer

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could not contact him or reach him by phone, the employer made the decision to send him a letter terminating his services. That letter was received via special delivery by the claimant and his wife on October 21, the same day he was admitted into Baltimore County General Hospital. On that same day, the employer spoke with the claimant's wife and was notified that the claimant was about to be hospitalized. However, he was terminated for his failure to keep the employer informed of his whereabouts.

## CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law. Under other circumstances, the claimant's admitted disregard for his employer's interests while he was absent would probably lead the Board to conclude that he was discharged for gross misconduct within the meaning of Section

6(b) of the law. However, due to the severe personal trauma that the claimant was experiencing as a result of his daughter's condition and the resulting health problems for the claimant himself, the Board finds that, under these particular circumstances, his conduct does not rise to the level of gross misconduct, and therefore a lesser penalty will be imposed.

### DECISION

The claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning October 19, 1986 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

The question of the claimant's ability to work within the meaning of Section 4(c) of the law is referred to the local office for investigation.

Hazel A. Warnick  
Associate Member

Thomas W. Keech  
Chairman

W:K  
kbm

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Date of Hearing: November 3, 1987

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WESTMINSTER

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**LOWER APPEALS DECISION**

— DECISION —

**Date:** Mailed August 21, 1987

**Claimant:** William Gordon

**Appeal No.:** 8706945

**Employer:** Liberty Medical Center, Inc.  
c/o The Gibbens Company

**L.O. No.:** 15

**Appellant:** Employer:

**Issue:**

Whether the Claimant was suspended or discharged for misconduct, or gross misconduct, connected with the Work, within the meaning of Section 6 (b) or 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, MARYLAND, 21201 IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON **September 8, 1987**

— **APPEARANCES** —

**FOR THE CLAIMANT:**

Not present

**FOR THE EMPLOYER:**

Frederick J. Stanton,  
Clinical Supr.  
Cynthia Placko,  
Gibbens Company

**FINDINGS OF FACT**

The Claimant was employed by Liberty Medical Center, Inc. from June 1, 1986 until October 20, 1986 as an addiction counselor 111, earning \$6.74 hourly.

The Claimant had a record of absenteeism and lateness.

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2

8706945

specifically on October 6th and 7th he failed to report to work or to call in. As a result of this he was given a written reprimand and counseling session on October 19, 1987. The Claimant has a telephone.

Again on October 21, 1987 the Claimant failed to call in or to show up for work. As a result of this he was discharged.

The employer stated that when the Claimant didn't show up for work this put additional burdens on co-workers.

The Claimant complained that he was under stress because his daughter was ill.

## CONCLUSIONS OF LAW

In the case of Watkins v. Employment Security Board, 266-MD223,292 A.2d 643 (1972): the Court of Appeals of Maryland held the Claimant's repeated persistent and chronic absenteeism where the absences are without notice and excuse and continue in the face of warnings, constitute gross misconduct.

Within the purview of the above captioned case it is concluded that the Claimant's failure to report and call the employer constitutes gross misconduct, connected with the work, within the provisions of Section 6 (b) of the Law. The determination of the Claims Examiner will be reversed.

## DECISION

The Claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6 (b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning October 19, 1986 and until he becomes reemployed and earns at least ten times his weekly benefit amount, (\$1,240.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.  
Hearing Examiner

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3

8706945

Date of Hearing: August 6, 1987

Cassette: 4641 (Vonella)

Copies Mailed on August 21, 1987 to:

Claimant

Employer

Unemployment Insurance - Westminster

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## Page Navigation Panel

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#)

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

**BOARD OF APPEALS**

Thomas W. Keech  
Chairman

Hazel A. Warnick  
Associate Member

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

Decision No.: 800 -BH-87  
Date: Nov. 12, 1987  
Appeal No.: 8706945  
S. S. No.:  
Employer: Liberty Medical Center, Inc.  
c/o The Gibbens Company  
L.O. No.: 15  
Appellant: CLAIMANT

Claimant: William Gordon

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.

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December 12, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

## — APPEARANCES —

FOR THE CLAIMANT:

William Gordon

FOR THE EMPLOYER:

Martha Young,  
Gibbens Company;  
Fred Stanton  
Witness

## 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 Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

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On several occasions, the claimant's supervisor had to warn him for not calling when he couldn't make it to work, but the employer continued to try to help the claimant and give him whatever time he needed with his daughter. The supervisor also personally counseled the claimant and also referred him to the medical director of the facility for counseling. The claimant, on his own, was seeing a psychiatrist at University Hospital.

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As a result of his increasing depression over his daughter's condition, the claimant was advised by his psychiatrist to seek hospitalization. On October 20th he did not report to work; at that time his doctor was attempting to get him

into a hospital. When he failed to report and the employer could not contact him or reach him by phone, the employer made the decision to send him a letter terminating his services. That letter was received via special delivery by the claimant and his wife on October 21, the same day he was admitted into Baltimore County General Hospital. On that same day, the employer spoke with the claimant's wife and was notified that the claimant was about to be hospitalized. However, he was terminated for his failure to keep the employer informed of his whereabouts.

#### CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law. Under other circumstances, the claimant's admitted disregard for his employer's interests while he was absent would probably lead the Board to conclude that he was discharged for gross misconduct within the meaning of Section 6(b) of the law. However, due to the severe personal trauma that the claimant was experiencing as a result of his daughter's condition, and the resulting health problems for the claimant himself, the Board finds that, under these particular circumstances, his conduct does not rise to the level of gross misconduct, and therefore a lesser penalty will be imposed.

#### DECISION

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The decision of the Hearing Examiner is reversed.

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Associate Member

  
\_\_\_\_\_  
Chairman



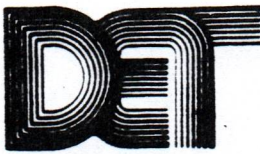
Date of Hearing: November 3, 1987

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WESTMINSTER



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND  
William Donald Schaefer  
Governor

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER  
Appeals Counselor

MARK R. WOLF  
Chief Hearing Examiner

— DECISION —

Date: Mailed August 21, 1987

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William Gordon

Appeal No.: 8706945

No.:

Employer:

Liberty Medical Center, Inc.  
c/o The Gibbens Company

LO No.: 15

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FINDINGS OF FACT

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John F. Kennedy, Jr.  
Hearing Examiner

Date of Hearing: August 6, 1987

Cassette: 4641 (Vonella)

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