

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
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Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 812-BR-92
Date: May 18, 1992
Appeal No.: 9203648
S. S. No.:

Claimant: Dennis L. Tillery

Employer: Maryland News Dist. Co.

L. O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article and whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 8-903 of the Labor and Employment Article.

— 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

June 17, 1992

— 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.

The following findings of fact are made based upon the testimony taken at the hearing. The claimant returned from a medical leave of absence. The medical leave was allegedly due to an injury suffered at work. Upon his return to work, however, the claimant complained that he could not perform the heavy work.

On January 3, 1992, the claimant stated that he could not do the work. He was told to go home on unpaid sick leave until he was able to work. (Presumably, if his injury was work-related, he would be covered by Workers' Compensation.) Although the claimant did not contact the employer for a month afterward, the employer still considers him to be an employee who is on an unpaid leave of absence for medical reasons. The claimant remained disabled up until at least April 1, 1992.

The Board concludes that the claimant was discharged. Being placed on an involuntary, unpaid leave of absence due to a medical disability is the full equivalent of a discharge -- for unemployment insurance purposes. Also, the discharge was not for misconduct, as the claimant's medical problem does not qualify as misconduct.

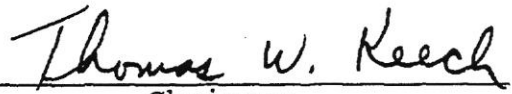
The claimant, however, is not able to work. This reason disqualifies him under Section 8-903 of the law. (The Board notes that the hearing notice informed the claimant that the ability to work was an issue that might be reached at the hearing.) The claimant will remain disqualified as long as he is not able to work.

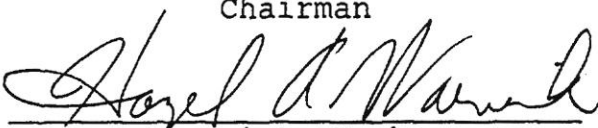
DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Maryland News Distributing Company.

The claimant was not able to work within the meaning of Section 8-903 of the Labor and Employment Article. He is disqualified from benefits from November 11, 1991 through April 1, 1992, and until he provides evidence to the local office that he is able to work.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:H
kmb

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE