

CORRECTED DECISION: Please Note that Decision No. and Dates have now been added to the first page. They were inadvertently left off the copies mailed yesterday.

kbm

*Maryland*

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

**BOARD OF APPEALS**

Thomas W. Keech  
Chairman

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

Decision No.: 869-BH-87

Date: Dec. 10 , 1987

Claimant: Tanya Weimer

Appeal No.: 8705814

S. S. No.:

Employer: Dept. of Transportation

L.O. No.: 40

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

January 9 , 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

**— APPEARANCES —**

FOR THE CLAIMANT:

Tanya Weimer, Claimant  
Carmella Howard, Claimant's  
mother

FOR THE EMPLOYER:

Michael Gallagher,  
Chief, U. I. Unit

## 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.

The claimant in this case was discharged by the employer primarily because of allegations that she misappropriated the employer's money. The allegation was that the claimant had taken the money from another employee who had momentarily left it in a restroom, and that the claimant had taken it to another-restroom on another floor for the purpose of converting it to her own use. The employer provided testimonial evidence to this effect at the hearing before the Hearing Examiner. Before the Board of Appeals, the employer presented no evidence. The claimant presented before the Board of Appeals evidence to the effect that she was tried in criminal court for this alleged crime and was found not guilty by a jury.

The Board agreed that there may not be evidence beyond a reasonable doubt to find that the claimant misappropriated the money. Unfortunately for the claimant, this is not the end of the inquiry. An unemployment case is an administrative case in which the standard of proof is not nearly as high as that in a criminal case. The employer does not need to prove that the claimant misappropriated the money beyond a reasonable doubt. In order to prevail, the employer need only prove by a preponderance of the evidence that the claimant did the act alleged. In any case, it remains possible that a person is found not guilty by a criminal court, but that the other party can still show by a preponderance of the evidence that the claimant did the act alleged.

This is such a case. The employer presented clear and convincing evidence at the hearing before the Hearing Examiner that the claimant misappropriated the money. The sequence of events described in the employer's witness's testimony leads convincingly to the conclusion that the claimant misappropriated the money. The employer's evidence, in the Board's opinion, is considerably more persuasive than that necessary to prove the case by a preponderance of the evidence. The claimant had two opportunities in this unemployment insurance proceeding to present evidence to explain or rebut the employer's evidence. In neither hearing did the claimant present any credible testimony or make any credible statement to disprove the facts shown by the employer's evidence.

## FINDINGS OF FACT

The claimant was employed by the Department of Transportation from November 4, 1985 until about February 19, 1987. She was a maintenance worker whose annual salary was \$11,821. The claimant was suspended from her employment pending charges for her removal from state service. The charges stem from allegation that she had misappropriated money belonging to the employer.

The claimant had, in fact, misappropriated money belonging to the employer.

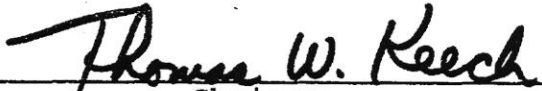
## CONCLUSIONS OF LAW


The claimant's conduct was a deliberate and willful disregard of standards of behavior her employer had a right to expect, showing a gross indifference to the employer's interest. This is "gross misconduct" within the meaning of Section 6(b) of the law.

## DECISION

The claimant was suspended for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is denied unemployment insurance benefits from the week beginning February 15, 1987 and until she becomes reemployed, earns at least ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.

  
\_\_\_\_\_  
Chairman

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

K:W

kbm

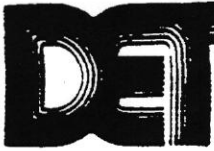
Date of Hearing: November 10, 1987

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer

BOARD OF APPEALS

THOMAS W. KEECH - Chairman
HAZEL A. WARRICK - Associate Member
SEVERNE E. LANIER - Appeals Counselor
MARK R. WOLF - Chief Hearing Examiner

-DECISION-

Date: Mailed: September 3, 1987

Appeal No.: 8705814

S.S. No.:

Claimant: Tanya L. Weimer

Employer: Dept. of Transportation

L.O.NO.: 40

Appellant: Claimant

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 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 18, 1987

-APPEARANCES-

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Fred G. Buchness,
Personnel Manager;
Sue Scanland, Corp.
of Facility Toll
Police

FINDINGS OF FACT

The Claimant filed an original claim for unemployment insurance benefits, effective February 27, 1987.

The Claimant was employed by the Department of Transportation from November 4, 1985 to on or about February 19, 1987, her

last job classification as maintenance worker, at an annual salary of \$11,821.00. The Claimant is suspended pending the outcome of charges for her removal from State service. The Claimant was separated from her employment for attempting to misappropriate monies belonging to the toll facilities found in a restroom.

Those monies were misplaced by a toll collector who was in the restroom along with several police officers of the toll facility. The Claimant was observed in another area of the restroom at the time all persons in the restroom left. Immediately after leaving the restroom, the toll collector acknowledged that she forgot to take the monies belonging to the Department. The Claimant was observed and always in the eyesight of the witness after being told of the missing monies. The Claimant was observed thereafter going into a ladies room several floors removed and coming immediately out of that restroom. She was then approached by the facility police and asked to be searched. The Claimant agreed to the search. The Claimant made a statement that she did not take the girl's change when approached by the police officers. The monies were found in the restroom when no other individuals were noted. entering that particular restroom. The Claimant needed a key from the secretary to enter the restroom where the money was found.

The Claimant was aware of the duties and responsibilities of a toll collector, for she was previously a toll collector from November 4, 1985 to on or about October 15, 1986 when she became a maintenance worker.

The Claimant removed monies belonging to the toll facility found in one restroom to another restroom. She refuses to testify or to answer any questions upon advise of her attorney.

#### CONCLUSIONS OF LAW

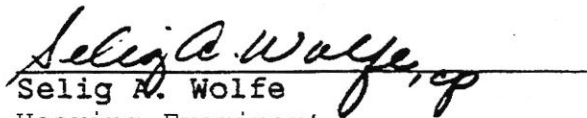
The Claimant's removal of lost monies from one restroom to the other without explanation and her previous knowledge of where those monies belong, demonstrates a gross indifference to the employer's interest, and a wanton disregard of one's obligation, falling within the gross misconduct provision of Section 6 (b) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner was therefore warranted and will be affirmed.

#### DECISION

The Claimant was suspended for disciplinary reasons demonstrating gross misconduct in connection with her work,

within the meaning of Section 6 (b) of the Maryland Unemployment Insurance Law. She is denied unemployment insurance benefits for the week beginning February 15, 1987 and until such time as the Claimant again becomes reemployed and earns at least ten times her weekly benefit amount.

The determination of the Claims Examiner is affirmed.

  
Selig A. Wolfe  
Hearing Examiner'

Date of Hearing: August 5, 1987

Cassette: 4618,4619 (Hardin)

Copies Mailed on September 3, 1987 to:

Claimant

Employer

Unemployment Insurance - Eastpoint (MABS)