

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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HAZEL A. WARNICK
MAURICE E. DILL
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SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 878-BR-86
Date: October 24, 1986
Claimant: Pamela Pittman
Appeal No.: 8606593
S. S. No.:
Employer: Meridian Nursing Center
ATTN: Personnel
L.O. No.: 45
Appellant: EMPLOYER

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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON November 23, 1986

— 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.

FINDINGS OF FACT

The employer provides custodial nursing care for the elderly. From August 5, 1985 to May 9, 1986 the Claimant worked as a certified geriatric nursing assistant. She was discharged for taking milk without permission.

On or about May 8, 1986 Mrs. Irma Oservo, the unit supervisor, informed Mrs. Pelmor, the director that some residents were complaining about not receiving their milk. Upon questioning another nursing assistant, she was informed that Mrs. Pittman, the Claimant, was taking milk for personal use.

When the Claimant was confronted she admitted taking milk. When her bags were searched six milks were found. Three were taken from the dirty tray cart and three were from other employees who had taken them from residents who did not want them.

The employer's policy is to discard all milk that is not consumed, whether open or not. Since the milk was going to be thrown away, the Claimant did not feel that she was stealing. If she had asked it would have been given to her.

In employer's exhibit #1, rule number 2 states: "Stealing, using or willfully destroying or damaging any property of the facility, its residents, visitors, or personnel.", can result in immediate discharge without warning.

CONCLUSIONS OF LAW

The term misconduct as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, a course of wrongful conduct committed by an employee within the scope of his employment relationship, during the hours of employment, or on the employer's premises.

Stealing constitutes, at least, misconduct if not gross misconduct. Light Street Delly, 271-BH-84. But in

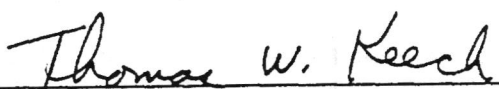
The claimant in this case took a number of cartons of milk from the employer's premises, in violation of the employer's rules. The Hearing Examiner found that there was no misconduct because of the fact that the employer would have thrown the milk away, had it known of its existence. This reasoning is faulty in that it ignores the facts that: (1) the employer's intended disposition of the property does not make it abandoned property; (2) the employer's policy was obviously designed at least in part for security reasons, to discourage the very type of activity the claimant was engaged in which could result in the employees taking food home while residents felt they were not getting their own food.

In the light of the purpose and importance of this policy, the Board concludes that the claimant's violation of it is a deliberate violation of standards her employer had a right to expect, showing a gross indifference to her employer's interests. This is gross misconduct within the meaning of Section 6(b) of the law.

DECISION

The claimant was discharged for gross misconduct, connected with her work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning May 4, 1986 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$370) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

kbm

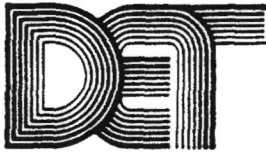
COPIES MAILED TO:

CLAIMANT

The Gibbens Co., Inc.

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



DEPARTMENT OF EMPLOYMENT AND TRAINING

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Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed: August 27, 1986

Claimant: Pamela Pittman

Appeal No.: 8606593

S. S. No.:

Employer: Meridian Nursing Center

LO.No.: 45

Appellant: Claimant

Issue: 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 OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A 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, 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:

Claimant - Present

FOR THE EMPLOYER:

Matry Young, Dora Pelmor;
Nursing Unit Supervisor,
Ann Shaw; Director of Nursing
Services

this case there is an additional consideration. We must consider whether the property taken was abandoned. If it was it belongs to no one and therefore, cannot be stolen. As stated before, the employer's policy is to throw away all of the milk that is not used. In light of this policy, one could reasonably conclude that as soon as milk is taken to a patient's or resident's room and the patient or resident let it be known that he does not want it the milk becomes abandon property. In this case three of the milks were from the dirty tray cart and three were from other employees who had taken them from residents who did not want them. Based upon general principles of common law, the milk became abandoned property and therefore could not be stolen.

Had the employer's rule stated that taking property from the premises without permission would result in immediate discharge without warning, we would be compelled to find that the Claimant committed misconduct. But under the rule as stated, and employer's exhibit #1, we do not find misconduct. The determination of the Claims Examiner is reversed.

DECISION

Based upon the above finding of facts and conclusions of law the determination of the Claims Examiner is reversed.

The Claimant was discharged, but not for misconduct within the meaning of Section 6(b) or 6(c) of the maryland Unemployment Insurance Law. The denial of benefits for the week beginning May 4, 1986 and until the Claimant becomes reemployed and earns at least ten times her weekly benefit amount, or \$370.00 is rescinded. No disqualification is imposed based on her separation from employment with Meridian Nursing Center.

Van D. Caldwell
Van D. Caldwell
Hearing Examiner

8606593

Date of hearing: 6-26-86
J. Gray
Cassette : 4256
Copies mailed on August 27, 1986

Claimant
Employer
Unemployment insurance - Northwest