

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	88 -BR-91	
	Date:	January 25, 1991	
Claimant:	Herman N. Webe	Appeal No.:	9010153"
		S. S. No.:	
Employer:	Anderson Oldsmobile Co. c/o ADP/UCM Dept. ATTN: Gabrielle Allen	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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

February 24, 1991

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record of this case, the Board of Appeals affirms the decision of the Hearing Examiner, but for different reasons. The Board adopts the findings of fact of the Hearing Examiner, but reaches different conclusions of law.

The employer failed to meet the requirements of Section 17-214.1(c)(iv) of the Annotated Code of Maryland, Health General Article. This section of the law provides that the employer, after having required an employee to be tested for the use or abuse of any controlled dangerous substance, and who receives notice that the employee has tested positive, after confirmation of that test result, shall provide the employee with a statement or copy of Section (d) of this section, permitting the employee to request independent testing of the same sample for verification of the test result. Section (d) of this section reads as follows:

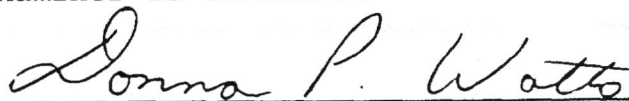
- (d) Verification of test results - (1) A person who is required to submit to job-related testing, under subsection (b) of this section, may request independent testing of the same sample for verification of the test results by a laboratory that:
- (i) Holds a permit under this subtitle; or
 - (ii) If located outside of the State, is certified or otherwise approved under subsection (d) of this section.
- (2) The person shall pay the cost of an independent test conducted under this subsection.

Therefore, based on the employer's failure to meet the requirements of the law, specifically Section 17-214.1 and thereby denying the claimant an opportunity to be re-tested, the Board of Appeals concludes that the claimant was discharged for no misconduct. The Board cannot consider as evidence test results which were not acquired in conformity with the law.

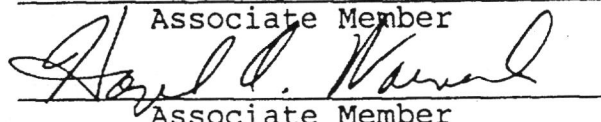
DECISION

The claimant was discharged, but not for misconduct or gross misconduct, connected with his work, within the meaning of Section 6(c) or 6(b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with Anderson Oldsmobile.

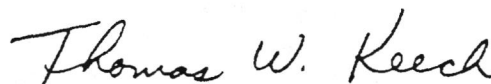
The decision of the Hearing Examiner is affirmed.



Associate Member



Associate Member



Chairman

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Gerald E. Askin, Esq.

UNEMPLOYMENT INSURANCE -- NORTHWEST

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed: 8/29/90
Claimant: Herman N. Webb Appeal No.: 9010153
S. S. No.:

Employer: Anderson Oldsmobile Company L.O. No.: 45
c/o ADP Chesapeake Region

Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 13, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Represented by:
Gerald E. Askin,
Attorney at Law
Joseph Uzupus, Jr,
Witness, Service
Manager for Anderson
Oldsmobile

FINDINGS OF FACT

The claimant's first day of work was March 7, 1988 and his last day was March 27, 1990. He worked full-time, receiving a piece work hourly rate of \$7.25 for each new car he serviced, and \$10.00 for each customer owned car he serviced as an automobile technician. Presently, the claimant is not employed.

The claimant was recovering from a non-work related injury to his knee when he was released by his physician. The claimant was required to report to the Maryland Industrial Medical Center, pursuant to an insurance company requirement of the employer. Mr. Uzupus told the claimant when to report, and in addition to a physical, the claimant was subjected to a drug test conducted by Friends Medical Laboratory, Baltimore, Maryland. The claimant tested positive for the presence of controlled, dangerous substances in his system, specifically, marijuana, cocaine, and quinine. The amounts of cocaine and quinine were not specified in the report, but the amount of marijuana was identified.

The credible evidence indicates that the claimant was at no time informed by the employer that he had an absolute right to have the specimen he provided for the medical lab retested by a separate lab. The credible evidence also indicates the claimant was taking medications, although they have not been precisely identified, which could have impacted on his test results. Finally, the credible evidence indicates that the claimant admits that he did smoke marijuana about "8 months ago". It has been medically documented that evidence of marijuana use can remain in one's body for an extended duration of time. The employer had made no allegations whatsoever that the claimant admitted smoking of marijuana was done on company time, or in any way impacted on his ability to perform his work, or was connected with the work in any other meaningful manner.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or [2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

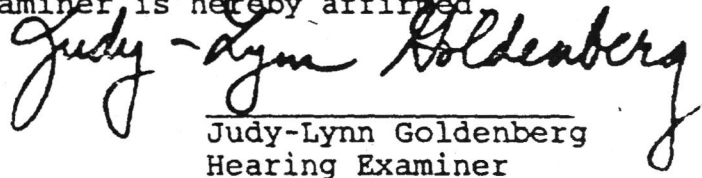
Article 95A, Section 6(c) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

In the present case, the mere fact that the claimant admits to having smoked marijuana quite sometime ago, does not show the behavior resulted in any detriment to the employer, nor does the evidence indicate that the behavior took place on the employer's premises. In fact, but for the coincidence that the claimant was compelled to report for a return to work physical for an unrelated injury, the employer to this day might not have been aware of the behavior for which it discharged the claimant. The employer made no allegations whatsoever that the claimant's work performance was effected by his alleged misbehavior of smoking marijuana.

DECISION

It is held that the claimant was discharged, but not for misconduct or gross misconduct connected with the work, within the meaning of Section 6(c) or Section 6(b) of the Law. No disqualification is imposed based upon his separation from the employment with Anderson Oldsmobile. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is hereby affirmed.


 Judy-Lynn Goldenberg
 Hearing Examiner

Date of Hearing: 8/16/90
 cc/Specialist ID: 45540
 Cassette No: 5686
 Copies mailed on 8/27/90 to:

Claimant
 Employer
 Unemployment Insurance -Northwest (MABS)