

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT



William Donald Schaefer, Governor

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

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

Decision No.: 880-BR-87
Date: Dec. 14, 1987

Claimant: George Draughn

Appeal No.: 8708593

S.S. No.:

Employer: Apex Warehouse, Inc.
ATTN: Personnel

L.O. No.: 1

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 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

January 13, 1988

— 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 claimant was fired from his employment because of four accidents which occurred while he was driving his employer's truck. In evaluating the degree of negligence, the Board has taken into consideration the fact that the claimant alone appeared to testify in person and under oath, and that his testimony was uncontradicted by any witness. The Hearing Examiner, when making the crucial finding of fact concerning the accident in which the truck jackknifed, relied on handwritten notes of a telephone conversation held between the Claims Examiner and the employer as sufficient evidence to overcome the sworn testimony of the claimant. This was erroneous, and the Board will make findings of fact based on the weight of the evidence in the record.

The claimant worked as a truck driver for the employer from September of 1986 until April 16, 1987. He earned \$9.00 an hour before he was discharged on the latter date.

He was fired for an accumulation of four accidents. In one accident, he sideswiped a fence alongside of the road. In another accident, he hit and bent a metal door during the process of unloading the truck. In a third accident, a car ran a red light and hit the rear wheels of the truck. The fourth accident occurred when the truck in which the claimant was driving jackknifed, causing extensive damage to the truck and trailer and injuring the claimant.

The first two accidents mentioned above were due to the negligence of the claimant. As the Hearing Examiner stated, these collisions with "non-moving objects" raise an inference of negligence which has not been refuted by the testimony. The accident in which an automobile ran into the rear wheels of the truck is not an instance of negligence. The jackknifing incident was caused by a faulty spring on the truck which caused the accelerator to stick.

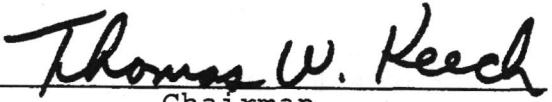
In making its conclusions of law, the Board does not agree that the degree of negligence equals that shown by the driver in the Griffith v. Millersville Auto Parts case (669-BH-83). Since the facts do not support a finding of negligence in the jackknifing incident, the remaining two incidents of negligence establish misconduct under Section 6(c) of the law but do not meet the definition of gross misconduct under Section 6(b) of the law.

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 ending April 18, 1987 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:W
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Apex Warehouse, Inc.
ATTN: Personnel

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND, 21201

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
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Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND
William Donald Schaefer
Governor

DECISION

Date: Mailed 9/21/87

Claimant: George E. Drughn

Appeal No.: 8708593

S. S. No.:

Employer: Apex Warehouse, Incorporated L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct
connected with the work under 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 October 6, 1987

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

NOT REPRESENTED

FINDINGS OF FACT

The claimant was employed by Apex Warehouse, Incorporated from
September 15, 1986 until his last day of work, April 16, 1987. He
was a truck driver, earning \$9.00 an hour.

The employer reported to the Agency that the claimant had four
accidents and that a prevention inspection did not show any
problems with accelerators; that he was given a written warning.

The claimant admitted that he had backed into a door while
driving the employer's vehicle in Alexandria, Virginia, and that
he side-swiped a fence.

On April 15, 1987, the claimant, while driving in Virginia, claimed that there was a problem with the spring on his accelerator and his equipment jack-knifed; that his tractor trailer end went into the side of the road. No one was injured other than himself. As a result of this, the claimant was discharged.

CONCLUSIONS OF LAW

In the case of Griffith v. Millersville Auto Parts, 669-BH-83, the Board of Appeals held the claimant was discharged for four driving incidents. First, the claimant deliberately passed on the righthand shoulder of the road; second, the claimant drove through a parking lot at an excessive rate of speed; third, the claimant rear-ended a car which was stopped, causing property damage and personal injuries; and fourth, vehicle slipped off road due to inclement weather and was damaged. Held: This is not a case of mere negligence or inefficiency; first two incidents were deliberate and third was so reckless as to amount to gross neglect of duty to the employe, constituting gross misconduct. However, accident involving inclement weather does not constitute misconduct.

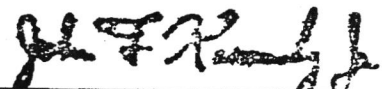
In this case, the claimant has three accidents attributed to his negligence. The first two, striking a fence and a door which were non-moving objects, certainly amounted to negligence.

In the last case, his tractor trailer jack-knifed. His contention that this was due to faulty equipment has not been sustained. It must be concluded that the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6 (b) of the Law. Therefore, the determination of the Claims Examiner must be affirmed.

DECISION

The claimant was discharged for gross misconduct connected with the work within the meaning of Section 6 (b) of the Law. Benefits are denied for the week beginning April 12, 1987 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1950), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.



John F. Kennedy, Jr.
HEARING EXAMINER

DATE OF HEARING - 9/14/87

cd

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Claimant

Employer

Unemployment Insurance - Baltimore - (NABS)