

 **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.: 913-BH-92

Date: June 11, 1992

Claimant: Mark Gintling

Appeal No.: 9114797

S. S. No.:

Employer: Baltimore Gas & Electric Co.  
ATTN: Rosemary K. Haynes  
Employee Services Analyzer

L O. No.: 40

Appellant: EMPLOYER

Issue:  
Whether the claimant was discharged for gross misconduct or misconduct, connected with his work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.

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**— 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

July 11, 1992

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**— APPEARANCES —**

FOR THE CLAIMANT:

Mark Gintling, Claimant

FOR THE EMPLOYER:

Elwood Anderson,  
Jeffrey Robinson &  
Rosemary Haynes,  
Witnesses;  
Ellis Justis, Atty.

## EVALUATION OF THE 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 Board does not find credible the claimant's testimony that he simply forgot to appear for the random drug testing. The claimant had been previously tested, knew the procedure and knew that he had to present himself within one hour. Other arrangements could have been made for the meter readings to be done at the airport, or the claimant simply could have called to let them know he would be arriving later because he was instructed to present himself elsewhere by his employer that morning.

## FINDINGS OF FACT

The claimant was employed from February 10, 1981 until August 2, 1991 as a meter reader for the employer, Baltimore Gas & Electric Company. As a part of his duties as a meter reader, the claimant was required to enter the homes of private individuals as well as commercial establishments to read either electric or gas meters.

The employer has a policy whereby all employees are subject to random drug testing. Due to the nature of the claimant's work, his involvement with gas, he was subject to the regulations of the Federal Department of Transportation and was thereby subject to random drug testing.

Upon his arrival at the office on July 29, 1991, the claimant was given a notice informing him that he was to report for a random drug test that day. It was approximately 7:15 a.m., and the claimant was informed that he had to submit himself for testing within one hour. The claimant had been selected for random drug testing on at least two prior occasions and knew the procedures. The claimant left the office but did not present himself for the random drug testing.

The employer received reports from the lab that did the testing for all the persons selected for random testing that day. The claimant's name was not among those that had presented themselves for testing. The employer called the lab and found out that the claimant had not reported for the test.

Later that day, the claimant reported back to the office. He did not inform his supervisor that he had not presented himself for drug testing. On July 30 the claimant worked his normal schedule. On July 31, 1991, the claimant worked most of the day and was then approached by his supervisor. The claimant's supervisor informed him that he needed to accompany him downtown to talk with the doctor that would have done the drug testing. After leaving the office without having seen the doctor, the claimant was informed that he was being suspended indefinitely. The claimant was later discharged from employment for refusing to take the random drug test pursuant to the employer's policies.

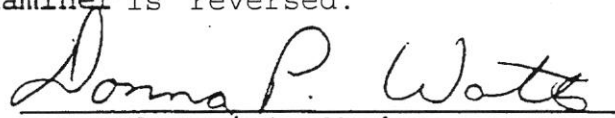
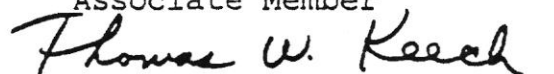
#### CONCLUSIONS OF LAW

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects, and that shows gross indifference to the interests of the employing unit, or which are repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations. The facts of this case are sufficient to sustain a finding of gross misconduct on the part of the claimant. The claimant was fully aware of the employer's random drug testing policy. He had been tested on at least two prior occasions. He received notice on the morning of July 29, 1992 with instructions to present himself for random drug testing. The testing was to be done within the hour. The claimant had sufficient time to present himself to the drug testing facilities.

#### DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning July 28, 1991 and until he becomes re-employed, earns ten times his weekly benefit amount (\$2,230), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

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

Date of Hearing: March 24, 1992

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EMPLOYER

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