

 **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.:	950-BR-90
	Date:	Sept. 21, 1990
Claimant: Dewayne Bydume	Appeal No.:	9007841
	S. S. No.:	
Employer: Baltimore Gas & Electric Co. ATTN: Rosemary Knott Haynes Employee Services Analyzer	L O. No.:	23
	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 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 COUNTY IN MARYLAND IN WHICH YOU RESIDE.

October 21, 1990

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 in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board finds that the claimant was discharged for gross misconduct, within the meaning of Section 6(b) of the law.

In light of the claimant's admitted drug use, one week prior to the test, his vague allegations questioning the chain of custody of his urine specimen are frivolous. The employer provided testimony concerning their procedures for drug screening and the general chain of custody. The claimant has failed to provide substantial evidence to rebut the employer's testimony.

The claimant, a truck driver for the employer, had submitted to rehabilitation for cocaine addiction, at the employer's expense. He had successfully completed that program and knew that one of the conditions of his return to work would be to remain drug free, which would be confirmed by random screening by the employer. He failed to live up to this condition; he was tested and the test confirmed his failure.

This is gross misconduct within the meaning of Section 6(b).

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 6, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Associate Member



Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLUMBIA

 **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

- D E C I S I O N -

Claimant:	Dewayne V. Bydume	Date:	Mailed: 7/27/90
		Appeal No.:	9008741
		S. S. No.:	
Employer:	Baltimore Gas & Electric Co.	p. No.:	023
		Appellant:	Claimant/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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

August 13, 1990

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

- A P P E A R A N C E S -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Dewayne V. Bydume - Present

Rosemary Knott
Haynes, Employees
Services Analyst

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective may 13, 1990.

The claimant was employed by the Baltimore Gas & Electric Company from April 19, 1976 to or or about May 8, 1990, his last job classification as a Senior Truck Driver at gross pay per week of approximately \$524.30.

The claimant was terminated from his employment for failing to pass a substance abuse test.

The claimant voluntarily went to his employer to accept rehabilitation for substance abuse in the later part of 1989. He was aware of the employers policy that he could be tested at any time and thereafter subject to termination if he failed to meet the fitness for duty policy of the employer by showing substance abuse in a urine analysis. The claimant was tested by the employer on May 8, 1990 and the test was shown positive for cocaine use.

The claimant admits that while on vacation he relapsed by purchasing \$25.00 worth of cocaine and using it. The drug test was taken approximately the second day after his return from his vacation.

The claimant previously passed a random test. At the time that the test was taken, the claimant observed the entire process.

When tested on May 8, 1990, the claimant was told to wait outside. During that period of time, the claimant saw approximately four individuals enter and leave the testing facility. When he came back to the area and after being told that he failed the test, the claimant requested that another test immediately be done for he questioned other specimens of being observed by him. In essence, the claimant challenged the chain of custody of his urine specimen and asked for another test which was refused by the employer.

CONCLUSIONS OF LAW

Since the claimant admitted to a relapse whereby the substance in his body could be detected approximately six days after such relapse, the claimant's failure to pass the substance abuse test demonstrates acts of misconduct in connection with one's work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

Ordinarily, such acts could constitute gross misconduct in connection with one's work, especially in view of the fact that the claimant was aware of the employer's random drug testing policy after being rehabilitated through the employer's program.

However, the claimant challenged the results of the employer's test in questioning the chain of custody after observing four other specimens. He was denied another test, and therefore, there is a question of the proper chain of custody in his mind as well as this Hearing Examiner's mind.

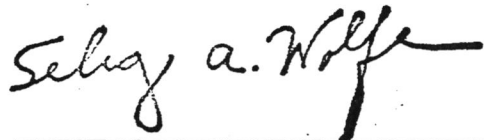
Under the above facts, the determination of the Claims Examiner was warranted and will be affirmed.

DECISION

The claimant was terminated from his employment for acts demonstrating misconduct in connection with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. The claimant is denied unemployment insurance benefits for the week beginning May 6, 1990 and for the nine weeks immediately following thereafter.

The determination of the Claims Examiner is affirmed.

The employer's protest is denied.



Selig A. Wolfe
Hearing Examiner

Date of Hearing: July 17, 1990
Ian/Specialist ID: 23381
Cassette No: 4941
Copies mailed on July 27, 1990 to:

Claimant
Employer
Unemployment Insurance - Columbia (MABS)