



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

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 990-BR-85

Date: October 31, 1985

Claimant: Ernest Kennedy

Appeal No.: 06851

S. S. No.:

Employer: Baltimore City Wastewater
Treatment Plant
c/o Charles Spinner

L.O. No.: 1

Appellant: EMPLOYER

Issue:

Whether the claimant was discharged for misconduct or gross misconduct, connected with the work, within the meaning of §§6(c) or 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 November 30, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but disagrees with his conclusions of law and reverses his decision.

The Board concludes that the claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b). The claimant, after being allowed to continue working for the employer under a work-release program, failed to adhere to the rules and be present at the work site when required. Furthermore, and as a result of these incidents, he was taken off work-release and required to serve the remainder of his 90-day sentence, making him absent, without excuse. See, Ather-ton v. Potomac Amoco, 2025-BR-83. The claimant's conduct clearly constitutes a series of repeated violations of employment rules proving that he regularly and wantonly disregarded his obligations and is therefore gross misconduct within the meaning of §6(b).

DECISION

The claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning March 31, 1985 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,090) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND
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Chief Hearing Examiner

— DECISION —

<p>Claimant: Ernest Kennedy</p> <p>Employer: Baltimore City Wastewater Treatment Plant Attn: Charles Spinner</p>	<p>Date: Mailed 8/6/85</p> <p>Appeal No.: 06851-EP</p> <p>S. S. No.:</p> <p>L.O. No.: 01</p> <p>Appellant: Employer</p>
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Issue:

Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law.
Whether the claimant was discharged for gross misconduct within the meaning of Section 6(b) 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 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 August 21, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Charles Spinner-
Personnel Technician
Supervisor
Charles Wisner-
Sludge Control
Manager

The employer's appeal was originally scheduled to be heard on July 8, 1985 in local office #1, at 11 a.m. before Hearings Examiner Robin Brodinsky. The employer failed to appear and the

Hearings Examiner accordingly dismissed the employer's appeal. The employer petitioned the Appeals Division for reopening of its dismissal based on the fact that it did not receive the Hearing Notice until July 11, 1985, subsequent to the date of the hearing. Good cause having been shown by the employer for the reopening of its dismissal, the employer's petition is hereby granted.

FINDINGS OF FACT

The claimant began working for the employer, an Agency of the Baltimore City Government, as a full-time Laborer August 10, 1981. The claimant was discharged effective April 10, 1985 for violation of Rule 56 of the Civil Service Commission, in particular, unsatisfactory attendance and unavailable ability to perform duties.

The testimony and evidence reveal that the claimant was incarcerated February 25, 1985, and the claimant continued working for his employer under a work-release program effective March 5, 1985. On March 18, 1985, the claimant was suspended for two days for unauthorized absence from his worksite. A second incident occurred on April 2, 1985, when the claimant failed to return to his work-release station which resulted in the work-release program removing the claimant from work-release on April 4, 1985 and not permitting him to return to the employment. The claimant then returned to jail and finished out the remainder of his 90-day sentence. Then, based on the claimant's poor work record and unavailability to continue at his work as a Laborer for the City Wastewater Division, the claimant was terminated.

The April 2 incident involved the claimant being sent to the clinic as a result of an on-the-job accident with instructions to return to his worksite after release by the clinic. He was released by the clinic about 10 a.m. with restricted duty. He did not return to work and finally showed up at the jail work-release center at the end of his City work day.

CONCLUSIONS OF LAW

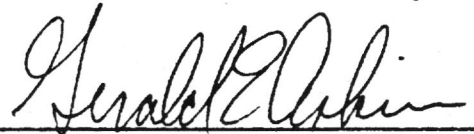
The non-monetary determination of the Claims Examiner that the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, is supported by the testimony of the claimant and the employer and the evidence. The claimant was discharged for violation of the employer's work rules which caused him to be

removed from the work-release program. However, the Hearings Examiner cannot agree with the employer's contention that the claimant should be disqualified as to eligibility for gross misconduct under the provisions of Section 6(b) of the Law. Section 6(b) of the Law provides that gross misconduct is conduct which is a deliberate and willful disregard of the standards of behavior which the employer has the right to expect, showing a gross indifference to the employer's interest or a series of repeated violations of employment rules, proving that the claimant regularly and wantonly disregarded obligations to the employer. The Hearings Examiner cannot conclude that the claimant's conduct falls within this definition. However, the Hearings Examiner does conclude that the claimant should be disqualified for the maximum period of disqualification provided for under Section 6(c) of the Law.

DECISION

The claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning March 31, 1985 and the nine weeks immediately following. The determination of the Claims Examiner is modified to this extent.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.



Gerald E. Askin
HEARINGS EXAMINER

Date of hearing: 8/1/85

Cassette: 5074, 4879

hf (C. Harris)

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Claimant
Employer
Unemployment Insurance-Baltimore