



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.:	328-BR-86
	Date:	April 30 , 1986
Claimant: Earl L. Cooper	Appeal No.:	8601140
	S.S. No.:	
Employer: Holy Cross Hospital	L.O. No.:	50 (D.C.)
	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 MAYBE 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.

May 30, 1986

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.

When an appeal has been filed late, the appealing party has the burden of showing good cause under Section 7(c) (ii). In this case, the claimant told the Hearing Examiner three times, twice before he was sworn and once after being sworn, that he did receive the determination (Agency Exhibit 1). The claimant also made two statements, one to the Local Office and one under oath, that he did not receive the determination.

The Hearing Examiner concluded that a timely appeal was filed. Clearly, the appeal was over a month late, and the Hearing Examiner meant that the claimant had good cause for his late appeal.

The Board concludes that the claimant submitted no credible evidence to establish that he had good cause for the late filing of his appeal to the Hearing Examiner. The Hearing Examiner thus had no jurisdiction to decide the case, and the decision of the Claims Examiner remains in effect.

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 November 10, 1985 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,190) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed. The previous decision of the Claims Examiner is reinstated.


Chairman


Associate Member

K:W

kbm

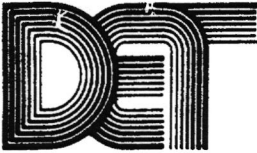
COPIES MAILED TO:

CLAIMANT

The Gibbens Company, Inc.

EMPLOYER

OUT-OF-STATE CLAIMS



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

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Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed 2/25/86

Claimant: Earl L. Cooper

Appeal No.: 8601140

S. S. No.:

Employer: Holy Cross Hospital

L.O. No.: 50 (D.C.)

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work under Section 6 (b) of the Law.

Whether the appealing party filed a timely appeal or had good cause for an appeal filed late under Section 7 (c)(ii) 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 March 12, 1986

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by
Minnie Blount,
Supervisor; and
Marty Young, The
Gibbens Company

FINDINGS OF FACT

The claimant was denied benefits by determination of the Claims Examiner on the ground that he was discharged for gross misconduct connected with the work within the provisions of Section 6 (b) of the Law. Notice of Benefit Determination was mailed to the claimant's address of record on November 21, 1985. This notice advised the claimant he had fifteen days within which to file an appeal, and the last date for filing an appeal was December 6, 1985.

The claimant filed an appeal dated January 29, 1986. At this time he gave the Claims Examiner a statement over his signature that he never received the determination.

At the hearing, the claimant gave conflicting testimony as to whether or not he had seen the determination and received it. However, his final testimony was that he had not received the determination.

The claimant filed a claim for benefits effective November 3, 1985. His weekly benefit amount was determined to be \$119.00.

The claimant was employed by Holy Cross Hospital from September 23, 1985 to October 23, 1985. He was a dietary aide, earning approximately \$5.19 an hour, normally the claimant worked from 7 a.m. to 3:30 p.m.

The claimant had fifteen occurrences of absenteeism and sickness, and as a result of this was discharged.

All the occurrences and absences were the result of medical problems, with the exception of twice when he was absent two days without leave. He was also late for 17 times, up to 30 minutes due to transportation problems.

The claimant has received warnings for his record of absenteeism.

CONCLUSIONS OF LAW

Under circumstances, it must be concluded that the claimant filed a timely appeal within the meaning of Section 7(c) (ii) of the Law.

It is found that the claimant was absent without permission on two occasions, and late on 17 times due to traffic problems. This must be considered to be a discharge for misconduct connected with the work within the meaning of Section 6 (c) of the Law. There is insufficient evidence to warrant the affirmation of the Claims Examiner's determination that he was discharged for gross misconduct connected with the work. The determination of the Claims Examiner will be reversed.

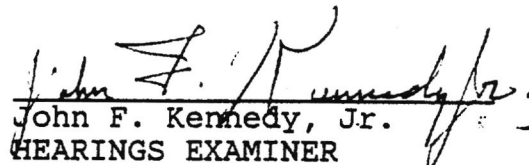
DECISION

The claimant filed a timely appeal within the meaning of Section 7 (c) (ii) of the Law.

The claimant was discharged for misconduct connected with the work within the meaning of Section 6 (c) of the Law. Benefits are denied for the week beginning November 10, 1985 and the nine weeks immediately following.

The determination of the Claims Examiner is reversed.

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.


John F. Kennedy, Jr.
HEARINGS EXAMINER

DATE OF HEARING - 2/20/86

cd

1218/Keller

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Claimant
Employer
Out of State Claims

The Gibbens Company, Inc.