

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 138-BH-87

Date: February 27 , 1987

Claimant: Warren Chase, Jr.

Appeal No.: 8610616

S. S. No.:

Employer: General Motors Corporation
ATTN: Thomas Del Belle, Sr.

L.O. No.: 1

Pers. Admin.
Appellant:

EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or Section 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 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 March 29 , 1987

— APPEARANCES —

FOR THE CLAIMANT:

Warren Chase, Jr. - Claimant

FOR THE EMPLOYER:

Thomas DelBello-
Senior Personnel
Administrator

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 into this case, as well as the Department of Employment and Training's documents in the appeal file.

The decision in this case hinges in part on the credibility of the claimant who denied damaging a fellow employee's automobile in the employer's parking lot. The claimant's denials, which he testified to in both hearings, were contradicted by an investigator's report. Although the investigator was not present before the Board or the Hearing Examiner and although more weight is usually given to live testimony than to a written report, in this case the Board finds the investigator's report to be more credible. The Board does not find the claimant's testimony to be credible because his testimony is contradicted by documentary evidence on a crucial point. The claimant specifically testified before the Board that he pleaded guilty to the act in question in criminal court solely on his lawyer's advice and only because he thought he would have to repay only \$300.00 in damages. He said that if he had known that he would have to pay back \$4,100.00 he would not have pleaded guilty. However, employer's exhibit B-1, which is part of the record, and is a transcript of the criminal hearing, clearly indicates that the claimant in fact did know that he would have to pay back \$4,100.00 and that this was discussed in his presence at the criminal hearing just prior to his agreement to accept the plea and pay the \$4,100.00.

FINDINGS OF FACT

The claimant was employed with General Motors Corporation as a booth cleaner from approximately April 12, 1965 until he was discharged on or about September 5, 1986. The claimant was discharged because he had deliberately damaged another employee's van while it was on the employer's parking lot. The van belonged to an employee with whom the claimant had had a disagreement.

At the time he was observed by a private investigator, the claimant got out of his car, walked over to the van belonging to the other employee, took his keys and deliberately scratched the car across the entire left side, from the rear to the front, leaving four scratches on the car. The claimant later pleaded guilty to this conduct in a criminal court and agreed to make restitution to the co-worker of over \$4,100.00, which included not only the cost of repairing the car but the cost of the investigation as well.

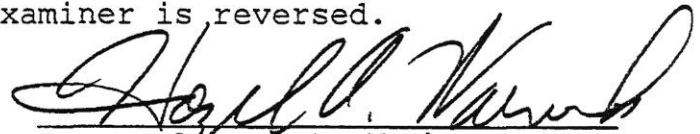
CONCLUSIONS OF LAW

The deliberate and malicious damaging or destruction of a co-worker's property, while on company premises, clearly constitutes a deliberate and willful disregard of standards of behavior which the employer had a right to expect showing a gross indifference to the employer's interests and is gross misconduct, within the meaning of Section 6(b) of the law. Therefore the decision of the Hearing Examiner is reversed.

DECISION

The claimant was discharged for gross misconduct, connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 31, 1986 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1950.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

K:W

kmb

DATE OF HEARING: December 22, 1986

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

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MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date Mailed: 10/22/86

Claimant: Warren Chase, Jr.

Appeal No.: 8610616

S. S. No.:

Employer: General Motors Corporation

L.O. No.: 01

Appellant: Claimant

Issue:

Whether the claimant was discharged for misconduct or gross misconduct within the meaning of Section 6(c) or 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 November 6, 1986

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

R. Schnappinger-
Labor Relations
Representative

FINDINGS OF FACT

The claimant was employed by General Motors Corporation from April 12, 1965 until September 5, 1986. At the time of his separation from employment, the claimant was a Booth Cleaner and earned \$13.09 per hour.

The claimant was terminated effective September 5, 1985 for violation of Rule 27, the deliberate misuse of company or other employee's property. The other employee had complaints due to vandalism of his van in the parking lot. The employer could not watch the vehicle at all times. Thus, that employee hired a licensed private investigator. On the night in question, June 30, 1986, the private investigator checked the van at 10 p.m. and found no damage. At 10:50 p.m., the claimant walked by the van, having parked two spaces from it. The private investigator checked the van and found scratches on it. He then followed the claimant to the guard's station and identified him.

Baltimore City Police were contacted, and a complaint was filed against the claimant.

The claimant contacted his lawyer and was told that it would be his word against the private investigator's. The weight of evidence would be on the investigator's side, so the claimant was advised to pay the damages so he wouldn't have to argue. The claimant knew that if he was found guilty General Motors would fire him.

The claimant filed a guilty plea with the Court and made restitution for the damages. He was given judgment before verdict, and placed on one year's supervised probation and instructed to go to Sheppard Pratt for evaluation. The claimant acted upon the advise of his attorney and figured that the company would not fire him if he did so.

The claimant did not scratch the vehicle in question, but only acted in order to keep his position with General Motors.

CONCLUSIONS OF LAW

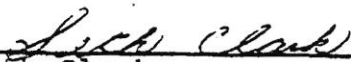
"Gross misconduct," is conduct which is a deliberate and willful disregard of the standards of behavior which an employer has a right to expect, showing a gross indifference to the employer's interest. Here, the act which resulted in the claimant's termination from employment occurred on the employer's parking lot. It was conceded that the employer could not guard the parking lot in question. The claimant's guilty plea in court does not bind the Administrative Agency to its verdict. Forbearance to pursue one's rights in a Court of Law do not affect the

qualification of benefits under the Unemployment Insurance Law. Therefore, based upon the claimant's sworn testimony that he did not scratch the vehicle in question, it must be concluded that the claimant's behavior does not demonstrate a deliberate and willful disregard of the standards of behavior which the employer has the right to expect so as to amount to gross misconduct within the meaning of Section 6(b) of the Law. Therefore, the determination of the Claims Examiner will be reversed.

DECISION

act demonstrating gross misconduct within the meaning of Section 6 of the Maryland Unemployment Insurance Law. No disqualification is warranted as to the claimant's separation from the employ of General Motors Corporation. The claimant should contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.



Seth Clark
Hearings Examiner

Date of hearing: 10/14/86
Cassette: 6553
hf (ParkerO

Copies mailed on 10/22/86 to:
Claimant
Employer
Unemployment Insurance - Baltimore