

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street  
Baltimore, Maryland 21201  
(301) 333-5033

William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**BOARD OF APPEALS**

Thomas W. Keech, Chairman  
Hazel A. Warrick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

	Decision No.:	422 -BR-88
	Date:	May 25 , 1988
Claimant: Glenn Richard, III	Appeal No.:	8800715
	S. S. No.:	
Employer: DHMG Laboratories Admin. ATTN: Personnel Dept.	L. O. No.:	5
	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 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.

June 24 , 1988

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 agrees that illness, including mental illness, may in certain cases excuse conduct which would otherwise constitute gross misconduct. For example, in Burns v. Bethlehem Steel Corporation (779-BH-82), the Board concluded that a claimant's absenteeism was not gross misconduct where it was caused by psychiatric and emotional illness and anti-social problems. Where a claimant was discharged for her bizzare actions at work which were the result of a side effect of a properly prescribed drug, the Board found that no misconduct occurred. Day v. Sinai Hospital (540-BH-85).

In this case, however, the claimant engaged in making false allegations of criminal activities on the part of his co-workers for a period of two years. In addition, he forged the signatures of other employees to some of these false accusations. The medical evidence is that he suffered from a "brief psychotic episode" and has an "underlying borderline personality disturbance."

The brief psychotic episode does not explain this two-year period of activity, and the Board does not agree that the underlying problem takes this case out of the category of gross misconduct. Where an employee's conduct shows an utter disregard of an employee's duties and obligations and is calculated to disrupt the discipline and order required in the workplace, it constitutes gross misconduct. Employment Security Administration v. LeCates, 218 Md. 202, 145 A.2d 840 (1958). The claimant's conduct in this case was calculated and was not, for the most part, the product of any psychotic loss of touch with reality. It was specifically intended to disrupt the workplace, and the fact that it may have been influenced by a borderline personality disorder is not sufficient to take it out of the category of gross misconduct.

#### 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 December 13, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,750), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech  
Chairman

Donna P. Watts  
Associate Member

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - FREDERICK

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 383-5040

STATE OF MARYLAND  
William Donald Schaefer  
Governor

--- DECISION ---

Date: Mailed March 11, 1988

Claimant: Glenn O. Richard, III

Appeal No: 8800715

S.S. No.:

Employer: DHMG Laboratories Administration No: 05  
Attn: Personnel Department

Appellant: Claimant

Issue: Whether the Claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.

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--- 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

March 28, 1988

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--- APPEARANCES ---

FOR THE CLAIMANT:

Present  
Glenn O. Richard, II,  
Father

FOR THE EMPLOYER:

John Shanderowski,  
Administrator

FINDINGS OF FACT

From October 9, 1985 to January 5, 1988, the Claimant worked as a laboratory scientist.

He was discharged for filing false reports of criminal misconduct among lab employees. Over a two year period he sent anonymous



letters and letters with forged signatures of other employees to the lab director, the Attorney General, and others alleging drug abuse and theft by lab employees.

The State police was called in to investigate. The Claimant confessed to his division chief.

It was decided that he would not be prosecuted if he sought psychiatric counseling. He was diagnosed for borderline personality disorder and is now receiving treatment.

#### CONCLUSIONS OF LAW

The Claims Examiner determined that the Claimant was discharged for gross misconduct under Section 6(b).


To find gross misconduct, there must be evidence of: "(1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations."

The words "willful and wanton" implies the ability to control ones conduct. Based upon the letter submitted by the Claimant's treating physician, I find that he did not have the required mental capacity and; therefore, his conduct does not fall within the definition of this Section of the Law.

#### DECISION

The determination of the Claims Examiner is reversed. The Claimant was discharged, but not for misconduct under Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. The determination denying benefits from the week beginning December 13, 1987 and until the Claimant becomes re-employed and earns at least ten times his weekly benefit amount (\$1,750) is rescinded.

No disqualification is imposed based upon his separation from employment with DHMG Laboratories.

  
 Van D. Caldwell  
 Hearing Examiner

Date of Hearing: February 19, 1988  
 Cassette: 962  
 Specialist ID: 05389  
 Copies Mailed on March 11, 1988 to:  
     Claimant  
     Employer  
     Unemployment Insurance - Frederick (MABS)