

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	935-BR-91
	Date:	August 2, 1991
Claimant: Jane C. Forman	Appeal No.:	9106431
	S. S. No.:	
Employer: Associated Catholic Charities ATTN: Betty Horwitt, Pers.	L.O. No.:	1
	Appellant:	CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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 LAW 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 CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

September 1, 1991

— 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 claimant was discharged for engaging in a verbal and physical confrontation with a co-employee, in front of a client.

The employer had no witness to this event. The claimant's testimony about how this event occurred was not contradicted or even challenged by the employer.

The claimant was verbally accosted by a fellow employee, who seemed determined to pick a fight with the claimant, despite the claimant's attempts to avoid one. The co-employee eventually called the claimant a "bitch," and said that "your mother is a bitch too." The claimant then replied, "NO more than yours."

The co-worker then grabbed the claimant, pushed her against the kitchen wall and began to bang her head against the wall. The claimant attempted to leave by one of the doors, but the co-worker dragged her back until they both fell in the middle of the floor. The claimant eventually got free and tried to leave by the other door, but the co-worker grabbed her again, and they began fighting in the doorway. The claimant attempted to call management, but the co-worker grabbed the phone from her and hung it up. Finally, the claimant did get someone on the phone, though the co-worker attempted to disrupt this call also. During this fight, the co-worker hit the claimant, but the claimant was not hitting the co-worker.

The Board perceives no misconduct on the claimant's part in this case. Reasonable acts of self-defense do not constitute gross misconduct. Winchester v. Joseph J. Hock Company (232-BH-83). Although the use of excessive force, even in self-defense, can amount to misconduct, Sacco v. Jones' Associates (146-BH-84), or gross misconduct, Goodall v. Holy Cross Hospital (507-BR-84), there is no evidence in this case of excessive force.

The only thing the claimant did which was not perfectly reasonable was her statement: "No more than yours." Considering the hostile statements that had just been made to her, however, this retort seems relatively mild. The Board will not find misconduct based upon that one statement, or based on any of the claimant's other conduct revealed in the testimony.

DECISION

The claimant was discharged, but not for any misconduct connected with her work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from employment with Associated Catholic Charities.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warwick
Associate Member

K:HW

kbm

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CLAIMANT

EMPLOYER

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