

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT



BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street

Baltimore, Maryland 21201

(301) 333-5033

William Donald Schaefer, Governor

J. Randall Evans, Secretary

Decision No.: 904 - BH - 87

Date: Dec. 24, 1987

Claimant: Ralph Jackson

Appeal No.: 8705268

S. S. No.:

Employer: Monumental Life Ins. Co.

L.O. No.: 3

pellant: 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 and whether the employer's appeal was late under Section 7(c) (3) 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.

January 23, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

—APPEARANCES—

FOR THE CLAIMANT:

Ralph Jackson - Claimant
Ora Lee - Wife

FOR THE EMPLOYER:

Judy Goldenberg-
Attorney

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

The Board did not take any testimony concerning "good cause" for late appeal within the meaning of Section 7(c)(3) of the law. The issue of good cause need not be addressed, as the appeal was timely.

FINDINGS OF FACT

The claimant was employed from October 3, 1983 through April 16, 1987 for the Monumental Life Insurance Company. He was a sales agent. At times during his employment, he had been a sales manager.

The claimant's duties consisted of visiting customers' homes and attempting to sell insurance. He was paid on a commission basis for all policies sold. Company rules required that the customers submit a check in payment of the first premium along with their application for insurance. Subsequent to the receipt of this check and application, the company would pay for medical records and evaluation as well as a credit evaluation of the proposed insured. At times, the evaluations would result in increased premiums, a fact which would cause some customers to cancel policies. The customers had a 20-day period after the receipt of the policy during which they could cancel it at their own discretion and get a full return of their first premium. The company, however, incurred some legal liabilities with respect to the policy from the moment it was signed.

It was against company policy for an agent to pay the first premium himself on policies that he wrote. The claimant was aware of this restriction but nevertheless paid the first premium on approximately ten of his policies in the last several months of his employment. This and other sales irregularities resulted in the claimant having an exorbitantly high rate of policies cancelled within the 20 day period by the customer. In addition, the claimant, on one occasion, completed and submitted a completely bogus policy on behalf of a fictitious insured person.

At about the same time the claimant confessed to these incidents, he also requested that he be given treatment for alcoholism. He was discharged based upon his violation of company policy concerning payment of the first premium and because of the phony application.

The benefit determination written in this case gave as the last day to appeal, May 25, 1987. The appeal letter, from the employer was postmarked May 26, 1987. May 25, 1987, however, was a federal holiday, the observance of Memorial Day. (The State of Maryland observed this holiday on May 29, 1987.)

CONCLUSIONS OF LAW

The employer filed a timely appeal within the meaning of Section 7 of the Maryland Unemployment Insurance Law. The last date to appeal, according to the determination, was May 25, 1987. Since that date was a legal holiday, the last day to appeal was automatically extended by operation of law until the following day, May 26, 1987. See, Article 94, Section 2 of the Annotated Code of Maryland. Since the appeal was timely filed within the meaning of Article 94, Section 2, there is no need to reach the issue of "good cause" for late appeal under Section 7(c)(3).

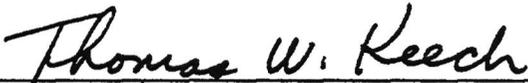
The Board further concludes that the claimant was discharged for gross misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. The claimant repeatedly violated the employer's policies in order to increase his current sales commissions. These violations resulted in considerable unnecessary work and expense on the part of the company. In addition, the claimant submitted an utterly phony application for insurance from a fictitious person. This conduct is clearly a series of repeated violations of employment rules, showing a wanton disregard for the employer's interest. It is also a deliberate violation of standards the employer has a right to expect, showing a gross indifference to the employer's interest. The claimant's actions in this case, therefore, meet both definitions of gross misconduct within the meaning of Section 6(b) of the law.

DECISION

The employer filed a timely appeal within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

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 April 12, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,950.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Chairman

Associate Member

K:W

kmb

DATE OF HEARING: December 1, 1987

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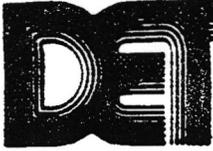
CLAIMANT

EMPLOYER

Judy-Lynn Goldenberg, Esquire

Monumental Life Insurance

UNEMPLOYMENT INSURANCE - CUMBERLAND



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
Governor William Donald Schaefer

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WERNICK

Associate Member

SEVERN E. LANIER
Appeals Counselor

MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed September 18, 1987

Claimant: Ralph M. Jackson

Appeal No.: 8705268

S.S. No.: 1

Employer: Monumental Life Insurance Co. L.O. No.: 3

Appellant: Employer

Issue:

Whether the Claimant was suspended or discharged for misconduct, or gross misconduct, connected with the work, within the meaning of Section 6 (b) or 6 (c) of the Law. Whether the Appeal was late under Section 7 (c) (3) 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 October 5, 1987

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

Don LaCates,
District Manager
Jim Malone, Attorney
at Law

FINDINGS OF FACT

The Claimant was last employed by the Monumental Life Insurance Company, located in Cumberland, Maryland, from October 31, 1983 to April of 1987. The Claimant filed a claim for unemployment insurance benefits effective April 12, 1987.

The Notice of Benefit Determination was mailed to the Claimant and Monumental Life Insurance Company wherein it was found that the Claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6 (b) or 6 (c) of the Maryland Unemployment Insurance Law. The Benefit Determination informed the Claimant and the employer that the last date to file an appeal was May 25, 1987. The Notice of Benefit Determination was mailed to the Claimant and Monumental Life Insurance Company on May 8, 1987. The Notice of Benefit Determination was mailed to Monumental Life Insurance Company, c/o Reed Roberts Associates, 2 Penn Center Plaza, 1426, Philadelphia, Pennsylvania 19102. Furthermore; the Claimant has submitted a Notice of Benefit Determination, a form DET-UIA222, Agency Exhibit number two, which indicated that the Notice of Benefit Determination was mailed to the Monumental Life Insurance Company located 2 East Chase Street, Baltimore, Maryland 21202.

Monumental Life Insurance Company submitted an appeal by GAB Business Services, Inc. which was postmarked on May 26, 1987. The employer's attorney argued that Monumental Life Insurance Company's appeal was filed late because notification was mailed to the address for Reed Roberts Associates, at 2 Penn Center Plaza, and that the Notice was not mailed to GAB Business Services located at Public Ledger Building, Suite 1056, Independence Square in Philadelphia, Pennsylvania. GAB Business Service, Inc. has taken over the company formerly called. Reed Roberts Associates. The representative from Monumental Life Insurance Company did not know if GAB Business Service, Inc. has sent a new address of record to the Department of Economic Development. Moreover, a letter of appeal filed by GAB Business Service, Inc., Agency Exhibit number three, the authorized agent, GAB Business Service, Inc. indicated that they were filing an appeal on the determination rendered May 8, 1987, and Notice of the Determination was mailed to GAB Business Service, Incorporated's client, Monumental Life Insurance Company.

CONCLUSIONS OF LAW

It will be held that the employer/appellant filed a late appeal, without good cause, within the meaning of Section 7 (c)(3) of the Maryland Unemployment Insurance Law.

Section 7 (c)(3) of the Maryland Unemployment Insurance Law indicates that:

"A determination shall be deemed final unless a party entitled to notice thereof files an appeal within 15

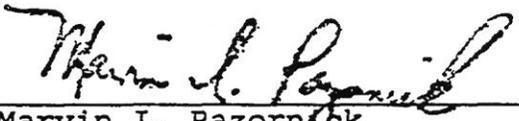
days after the notice was mailed to his last known address, or otherwise delivered to him; provided, that such period may be extended by the Board of Appeals for good cause."

The Board of Appeals has delegated authority to the Hearings Examiner to determine good cause within the confines of Section 7 (c)(3) of the Maryland Unemployment Insurance Law. The Hearings Examiner concludes that Monumental Life Insurance Company filed an appeal by letter postmarked May 26, 1987 when the last date to file an appeal was May 25, 1987. The employer's letter of appeal was filed by GAB Business Service, Inc.; GAB Business Service, Inc. has taken over the prior company, Reed Roberts Associates. GAB Business Service, Inc. in a letter dated May 26, 1987 indicated that Notice of the Benefit Determination was mailed to the Monumental Life Insurance Company at 2 East Chase Street, Baltimore, Maryland 21202. Further, the Board of Appeals in the case of Hariston v. Indian Creek School, 796-BR-83, held that the failure of an authorized representative to file an appeal on time is not "good cause" for a late appeal under Section 7 (c)(i) of the Law. It will be held that the appealing party did not have good cause for an appeal filed late within the meaning of Section 7 (c)(3) of the Law. The determination of the Claims Examiner shall remain in effect.

DECISION

The appealing party did not have good cause for an appeal filed late within the meaning of Section 7 (c)(3) of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner that the Claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6 (b) or Section 6 (c) of the Maryland Unemployment Insurance Law, remains in effect.



Marvin I. Pazornick
Hearing Examiner

Date of Hearing: August 26, 1987
Cassette: 5127B, 5128 A-B (Dudley)
Copies Mailed on September 18, 1987 to:
Claimant
Employer
Unemployment Insurance - Cumberland (MABS)

Jim Malone, Attorney at Law

Monumental Life Insurance Company