

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	309-BR-91	
	Date:	March 18, 1991	
Claimant:	Frank Cofield	Appeal No.:	9017694
		S. S. No.:	
Employer:	Apex Grounds Mgmt., Inc. ATTN: Alan Terrill, President	L O. No.:	1
		Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) 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, 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 AT MIDNIGHT ON April 17, 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.

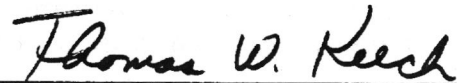
The Board agrees with the Hearing Examiner that the claimant's conduct constituted "gross misconduct" within the meaning of Section 6(b) of the law. The claimant, however, was not actually discharged. He quit because he was sure that he would be discharged if he reported to work.

When an employee voluntarily quits in anticipation of discharge for his own misconduct, this a voluntary quit within the meaning of Section 6(a) of the law, without good cause or valid circumstances. The maximum penalty must be applied. (This is the same penalty which was applied under Section 6(b) by the Hearing Examiner.)

DECISION

The claimant voluntarily quit, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning September 23, 1990 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$900.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman

Associate Member

K:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	Frank Cofield	Date:	Mailed:	01/24/91
		Appeal No.:		9017694
		S. S. No.:		
Employer:	Apex Grounds Management, Inc.	L.O.No.:		01
		Appellant:		Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.
Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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

February 8, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present;
Alonzo Powell, Witness

FOR THE EMPLOYER:

Alan Terrill,
President;
Jeffrey Cofield,
Employee;
Kevin McCarthy,
Former employee;
John Penix,
Employee

FINDINGS OF FACT

The claimant began his job as a landscape worker on June 10, 1990; his last day of work was September 25, 1990. During the

time he worked he was required, and would, drive company vehicles for company work only. The employer assumed he had a valid driver's license. Everyone in this landscaping company shared driving duties.

On September 14, 1990, a Friday, it was discovered that the claimant had driven the company's 1984 Ford blue truck home with him the previous evening. The claimant had not been given permission to use it for personal use. The employer and Jeffrey Cofield, a relative of the claimant's, (who had recommended him for this job) waited to hear from the claimant that Friday, but did not. In order to prevent the employer, Alan Terrill from calling the police and reporting the truck stolen, Jeffrey Cofield went to look for the claimant. He spoke to him, and got the truck back from the claimant early the next Saturday morning; Jeffrey Cofield returned the truck on Sunday, September 16, 1990. The truck had been damaged during the time that the claimant had taken it. The claimant had intended to move furniture with the truck, and then wanted to have repair work performed on it on that Friday.

Because the truck had been damaged, the employer decided to allow the claimant to continue to work and deduct the damage from his paycheck. At this time, the employer still did not know that the claimant did not have a valid driver's license. The claimant never told the employer that he had no license, even though he knew that he should not drive the truck without one. During the time the claimant was absent from work the next week with an on-the-job injury, the employer learned from Alonzo Powell, the claimant's brother, that the claimant had no driver's license. The employer told Jeffrey Cofield that he was extremely unhappy with the fact that the claimant had no valid driver's license, as well as the fact that the claimant had filed a Workers' Compensation claim. Jeffrey Cofield relayed this information to the claimant; the claimant assumed that this employer would fire him if he returned to work. This assumption was correct, as the employer stated that if the claimant had returned to the job, he would have fired him immediately for his lack of a valid driver's license, not for the Workers' Compensation claim.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides that an individual shall be disqualified from benefits where he is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has a right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

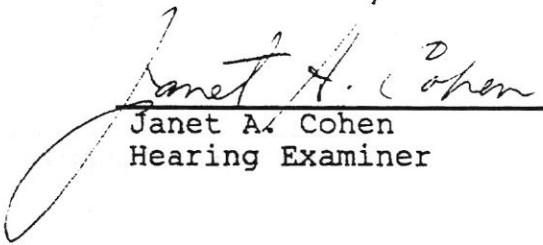
Not only did this claimant take this employer's truck for his own

purpose without permission, he endangered the employer's interests by driving for months without a license. If the claimant chose to accept this job and drive the truck, he clearly intended this employer to believe that he could drive legally. Although the Workers' Compensation claim appears to have caused some, anger on the part of the employer, it is clear that the employer fired the claimant for the lack of a valid driver's license, as well as taking the truck without permission. The claimant correctly surmised that if he returned to work he would have been fired.

DECISION

The Benefit Determination is reversed. It is held that the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Law. He is disqualified from receiving benefits from the week beginning September 23, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$900.00) and thereafter becomes unemployed through no fault of his own.

The claimant was discharged for gross misconduct, in connection with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.


Janet A. Cohen
Hearing Examiner

Date of Hearing: 01/18/91
alma/Specialist ID: 01022
Cassette No: 444A, 444B, 571A
Copies mailed on 01/24/91 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)