

89164046  
CASE NO. \_\_\_\_\_

In The Circuit Court for Baltimore City  
**CIVIL**

Part \_\_\_\_\_ of \_\_\_\_\_ Parts

*T-2691*  
*CR-11-2-65*

In the Matter of

MORRIS S. BERMAN

VS

BD OF APPEALS DEPT. OF ECONOMIC & EMPLOYMENT  
DEVELOPMENT, ET AL

6888915

X

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 89164046/CL98865

PAGE 1 of     

PARTIES	ATTORNEY(S)
<p>MORRIS S. BERMAN</p> <p>VS</p> <p>BOARD OF APPEALS DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT</p> <p>JAMES JONES</p>	<p>PROPER PERSON</p> <p><i>Alexander Knight, Jr.</i> <i>Lynn W. Wickett</i></p> <p>528479 911960</p>

DATE	DOCKET ENTRIES	NO.
06-13-89	ORDER FOR APPEAL FROM THE DECISION OF THE BOARD OF APPEAL, DEPARTMENT OF ECONOMIC & DEVELOPMENT, PETITION.	
7-2-89	<i>Appy Alexander Knight, Jr. &amp; Lynn W. Wickett, Atty for Dept Board of Appeals) filed answer</i>	1 ✓
7-27-89	<i>affid of Morris S. Berman fd.</i>	3
7-31-89	<i>Transcript of record (del. C. F.) pp 103</i>	4
7-31-89	<i>Notices sent in accordance with Md rule 8-12(5)</i>	5
7-31-89	<i>Deflt's (Board of Appeals) motion to prevent additional evidence</i>	6
8-23-89	<i>Pltff's memo.</i>	7
8-23-89	<i>Ordered that the affdt filed by plaintiff is "stricken" (Weed, J)</i>	8
9-22-89	<i>Deflt's (Board of Appeals) memo</i>	9
12-4-89	<i>Held Sub Chia (Hollander J)</i>	10
4-3-90	<i>Memorandum of Opinion and Judgment that the decision of the Board be, and the same hereby is, "affirmed" with costs to be paid by the appellant fd. (3-30-90) (Hollander J) (Ces)</i>	11

11

MORRIS S. BERMAN

\* IN THE

Appellant

\* CIRCUIT COURT

v.

\* FOR

JAMES E. JONES

\* BALTIMORE CITY

and

\*

BOARD OF APPEALS,  
DEPARTMENT OF ECONOMIC  
AND EMPLOYMENT DEVELOPMENT,

\*

\*

Appellees

\* Case No. 89164046/CL98865

\* \* \* \* \*

MEMORANDUM OF OPINION AND JUDGMENT

Hollander, J.

I. Introduction and Background

Morris S. Berman ("Berman") has appealed from the decision of the Board of Appeals of the Department of Economic and Employment Development (the "Board"), dated May 18, 1989. The Board found that James E. Jones ("Jones") was not discharged from his employment due either to gross misconduct or misconduct connected with his work within the meaning of Code, Art. 95A, Secs. 6(b) and (c). Accordingly, the Board determined that Jones was entitled to unemployment insurance benefits.

II. Factual Summary

Jones was employed as a property manager and maintenance person by Berman for approximately one year until his discharge on October 14, 1988. R. 1, 18.<sup>1</sup> In his testimony at the agency hearing, Berman testified that he discharged Jones

<sup>1</sup> The letter "R" stands for reference to the record which has been numbered in this case.

at

because of repeated instances of unsatisfactory behavior connected with the job. Berman claimed that Jones did not perform his work in a competent manner. R. 28, 41. Other complaints presented by Berman were that: Jones did not take proper care of Berman's property, but allowed it to suffer severe damage, R. 29, 38; Jones used Berman's van and truck for non-business purposes without authorization, R. 25-26, 29-30, 32; Jones did not return all the tools and materials provided to him by Berman for job-related purposes, R. 22-26, 30, 32; Jones removed building materials that belonged to Berman from Berman's property without permission, and kept the materials for his own personal use. R. 28-29.

Berman also claimed that Jones was disrespectful to him, and that he was concerned about a physical confrontation with Jones. R. 30-31, 43-44. Thus, as he explained, the two men hardly were on speaking terms, and Jones would not even say "good morning" to him. R. 38-39. The letter of discharge that Berman eventually sent to Jones mentioned Jones' failure to say good morning. According to Jones, the letter evidences that this was the reason for his termination. R. 42-43, 92.

Although the allegations of misconduct were numerous, at the hearing Berman did not present any written documentation or physical proof of any of his complaints about Jones. R. 40-41, 47-48. He conceded that the projects that were assigned to Jones were generally completed. R. 41. Berman also admitted

that he never disciplined Jones for these claimed instances of misconduct. R. 38, 40.

Berman called Jones' supervisor, George Jones ("G. Jones"), as a witness.<sup>2</sup> G. Jones introduced Jones to Berman and helped arrange his hiring. R. 55, 57-58. G. Jones substantiated some of Berman's claims, such as the fact that he had "covered up" work that Jones had "botched," so that when Berman saw the work, he would think it had been done properly. R. 52-53. G. Jones also agreed that there had been tools and equipment given to Jones that were never returned. R. 49-51. He admitted, however, that most, if not all, of these had been items Jones said were stolen while being stored overnight in Berman's van, and a proper police report had been made. R. 49-51. Finally, G. Jones agreed that, by the end of his term of employment, Jones would not talk to Berman or the other workers, and was causing a strain among his fellow workers. R. 52. He attributed this strain to Jones' "nasty disposition." R. 52.

In his testimony, Jones stated that he felt that he had done an adequate job, and that he had always believed his work had met the approval of his supervisor, G. Jones. R. 66-67. According to Jones, G. Jones had never corrected his work or asked him to change it. R. 67. Jones testified

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<sup>2</sup> George Jones is not related to James Jones.

that as to any work that he did on the side, he believed that such time was his own, and he did not let such work interfere with his duties. R. 62.

Jones also testified at length concerning his use and care of the van which he drove. The parties' dispute over the van was a sore point between the two that certainly helped exacerbate the strain of their working relationship.<sup>3</sup> Although it was not clearly developed in the record below, Jones claimed that title to the van was in his name, and that the van was insured by him. R. 74-75. Jones apparently thought that the van was a replacement for a vehicle of his that he had brought with him when he went to work for Berman, but that had subsequently become inoperable. R. 62, 75. Although there was no written agreement regarding the van, Berman indicated on the record that he was the lienholder of the vehicle. R. 75. Jones stated that he did not use his work van for any work on the side. R. 77.

In any event, as a result of having the van, Jones' work

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<sup>3</sup> The van was the subject of separate litigation between Berman and Jones at the time of the hearing below. See R. 44-45. Jones stated that he considered the vehicle his. While Berman might have advanced him the money for the vehicle until he got paid, Jones strongly denied that Berman had paid for the van outright, so as to be able to claim complete ownership. R. 62. In his own testimony, Berman admitted that he kept Jones' final paycheck in its entirety due in large part to Jones' alleged failure to return what Berman considered to be his van. R. 44-46.

responsibilities came to include providing pick-up and delivery services for Berman. R. 59. Jones testified that he was reluctant to take on the responsibilities of pick-up, delivery, storing and hauling his employer's tools and materials, but he did it as a concession to Berman. R. 60, 64. The van was broken into in front of Jones' house on several occasions, and each time, he notified Berman, called the police and gave a full report. R. 60.

Jones further testified that the issue of compensation was one of contention. Jones asked for compensation for what he felt was the extra time he was required to work since he picked up other workers in the morning and dropped them back home in the evening. R. 63. Berman refused to pay him any additional amount for these tasks, and Jones felt that Berman was unfair about this matter. R. 63-64. Berman also rejected Jones' subsequent request for a raise. R. 64-65. Finally, Jones complained that Berman refused to reimburse him for expenses that Jones incurred in the course of his employment for Berman. R. 65.<sup>4</sup> It was the tension that arose from these matters that caused the strain in their working relationship, according to Jones. R. 65.

As to Berman's other claims, Jones denied that his performance at work was in any way unsatisfactory. He specifically denied

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<sup>4</sup> Jones indicated initially before the hearing that he believed that Berman had fired him because he asked for a raise. See R. 1.

removing any materials from property that belonged to Berman. R. 77. He also denied having any knowledge or responsibility for any damage done either to Berman's truck or to the van. R. 81-82. Jones also denied misappropriating any of Berman's tools, and disputed the ownership of some of the tools that Berman claimed were taken by Jones. R. 79-80.

After considering the many allegations of misconduct made against Jones, and the conflicting evidence presented, the Hearing Examiner held that there was insufficient evidence of misconduct. R. 95-96. Instead, the Hearing Examiner found that there was a "personality conflict" between Jones and Berman. R. 96. The Board affirmed the Hearing Examiner's decision and adopted his findings of fact. R. 102.

### III. Scope of Review

Code, Art. 95A, Sec. 7(h) governs the standards of judicial review in connection with the administrative adjudication of unemployment insurance benefits. Section 7(h) provides in pertinent part as follows:

In any judicial proceeding [in regard to claims for benefits], the findings of the Board of Appeals as to the facts, if supported by competent, material and substantial evidence in view of the entire record, and in the absence of fraud, shall be conclusive, and the jurisdiction of [the Circuit Court] shall be confined to questions of law.



Board of Educ., Mont. Co. v. Paynter, 303 Md. 22, 34-35 (1985).  
See also, Board of Appeals v. City of Baltimore, 72 Md.App.  
427, 431-32 (1987); Adams v. Cambridge Wire Cloth Co., 68  
Md.App. 666, 673 (1986).

Section 7(h), and the case law interpreting it, make clear that "findings of fact made by the Board are binding upon the reviewing court, if supported by substantial evidence in the record." Board of Appeals, supra, 72 Md. App. at 431. See also, Allen v. Core Target City Youth Program, 275 Md. 68 (1975). Any inference to be drawn from the facts is also left to the agency. It is "the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inference." Baltimore Lutheran High School Assoc., Inc. v. Employment Security Admin., 302 Md. 649, 663 (1985).

The test is not how this Court would resolve a factual dispute, or questions of credibility. On review, this Court may only determine "if, from the facts and permissible inferences in the record before the [Board], reasoning minds could reach the same result." Id. Consequently, this Court may not reject the Board's decision if it is supported by substantial evidence, unless the decision is wrong as a matter of law. Adams, supra, 68 Md. App. at 673.

Decisions of administrative agencies are prima facie correct. On appeal, the agency's decision must be viewed in the light most favorable to the agency. Paynter, supra, 303 Md. at 35-36. See generally, Bulluck v. Pelham Wood Apts., 283 Md. 505 (1978). Accordingly, "the reviewing court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken." Paynter, supra, 303 Md. at 35 (emphasis in original).

#### IV. Discussion

The Board's decision granting unemployment benefits to Jones is supported by substantial evidence and is correct as a matter of law.

In Allen v. Core Target City Youth Program, supra, 275 Md. at 86, the Court of Appeals noted that the term "misconduct" is not defined in Art. 95A, Sec. 6(c). In Rogers v. Radio Shack, 271 Md. 126, 132 (1974), however, the Court set forth the definition used by the Board itself, and implied that it was a reasonable one:

The term 'misconduct,' as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises.

The Court's analysis in Rogers is instructive as to the inquiry the Board undertakes when making a determination as to misconduct to support an employee's discharge from employment. This inquiry is almost exclusively a factual one, in which the fact-finder must assess the credibility of witnesses and weigh the conflicting evidence presented. The trier of fact must also examine and consider the circumstances of the employee and the relationship of his conduct to his employment.

The role of this Court in reviewing an administrative agency's assessment of credibility of witnesses in this analysis is clear:

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Comm'r, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 508 (1977). See also, Jacocks v. Montgomery County, 58 Md. App. 95, 110-11 (1984); Terranova v. Board, 81 Md. App. 1, 10-13 (1989).

In this case, the determination at the core of the agency's decision was one of credibility, for the evidence produced by the two sides was diametrically opposed. The Hearing Examiner in this case had the opportunity to observe the demeanor

of the witnesses, to question them, and to make conclusions as to their credibility. The Hearing Examiner did so, and he found more credible the testimony that was offered by Jones. In this case, to believe one party was to disbelieve the other. As the Court said in Cason, supra, "[t]he issue was credibility, and nothing more. Direct evidence of an ultimate fact may be true, or it may be untrue, but it surely cannot be called insubstantial." 34 Md. App. at 509.

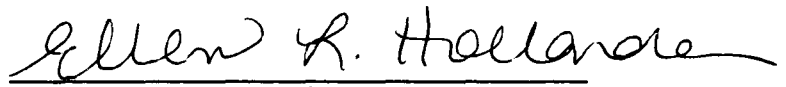
This Court must review the agency's decision in the light most favorable to the agency, since such decisions are prima facie correct and carry a presumption of validity. The ultimate question is whether reasoning minds could reach the same result from the facts and permissible inferences in the record before the court. In this case, there was ample evidence before the Hearing Examiner and the Board to support a determination that there was no misconduct committed by Jones within the meaning of Section 6(c), and that there merely existed a personality conflict between an employer and his employee. That conflict was found an obstacle to a productive employment relationship between them, culminating in Jones' discharge.

The Hearing Examiner properly applied the relevant statutory provisions to the facts, which are supported by substantial evidence. Accordingly, Jones was lawfully granted receipt of benefits.

Based on the foregoing, it is, this 30<sup>th</sup> day of  
March, 1990, by the Circuit Court for Baltimore City,

ORDERED that the decision of the Board be, and the same  
hereby is, AFFIRMED.

Costs to be paid by Appellant.

  
Ellen L. Hollander, Judge

cc: Mr. Morris S. Berman  
4010 Glengyle Avenue  
Baltimore, Maryland 21215

Mr. James Jones  
262 Robert Street  
Apartment B1  
Baltimore, Maryland 21217

Lynn Weiskittel, Esquire  
Assistant Attorney General  
217 E. Redwood Street  
Room 1101  
Baltimore, Maryland 21202

PRESIDING JUDGE .....

COURTROOM CLERK .....

STENOGRAPHER .....

10

To: Room 462E.

ASSIGNMENT FOR MONDAY DECEMBER 04, 1989

CASE NUMBER - 89164046  
CASE TITLE - BERMAN VS BOARD OF APPEALS, ETAL CL98865  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

CL

JONES, JAMES  
WRIGHT, ALEXANDER JR  
WEISKITTEL, LYNN  
BERMAN, MORRIS S

DEFENDANT  
DEFENSE ATTORNEY 333-6943  
DEFENSE ATTORNEY 333-6943  
PLAINTIFF

*Held Sub curia.*

TYPE OF PROCEEDING: ( ) JURY (  ) NON-JURY ( ) OTHER

DISPOSITION (CHECK ONE)

( ) SETTLED ( ) CANNOT SETTLE ( ) NEXT COURT DATE

( ) VERDICT ( ) REMANDED ( ) NON PROS/DISMISSED

( ) JUDGEMENT NISI ( ) ORDER/DECREE SIGNED ( ) OTHER

( ) JUDGEMENT ABSOLUTE ( ) ORDER/DECREE TO BE SIGNED

( ) POSTPONED ( ) MOTION GRANTED

(  ) SUB CURIA ( ) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE Ellen Hollander DATE 12/4/89

9

FILED

SEP 22 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

MORRIS S. BERMAN,  
Appellant

v.

JAMES E. JONES

and

BOARD OF APPEALS,  
DEPARTMENT OF ECONOMIC  
AND EMPLOYMENT DEVELOPMENT,

Appellees

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY

\* No. 89164046/CL98865

\* \* \* \* \*

MEMORANDUM IN SUPPORT OF THE BOARD OF APPEALS

I. Introduction

The Board of Appeals of the Department of Economic and Employment Development (the "Board"), an Appellee herein, found that James Jones, Appellant, was entitled to unemployment insurance benefits by a decision dated May 18, 1989. The Board found that Mr. Jones was terminated from his work for a non-disqualifying reason within the meaning of Maryland Annotated Code, Article 95A.<sup>1</sup> Morris S. Berman, Mr. Jones' former employer, appealed that decision to this Court.

This Memorandum demonstrates that the factual findings made by the Board are supported by competent, material and substantial evidence in the administrative record; that the Board made no errors of law and that, therefore, the Board's decision should be affirmed.

<sup>1</sup>Unless otherwise indicated, all statutory references are to Article 95A of the Maryland Annotated Code.

## II. Scope of Review

Judicial review of the administrative adjudication of unemployment insurance appeals is governed by Maryland Annotated Code, Art. 95A, §7(h). Findings of fact made by the Board are binding upon this court if there is substantial evidence in the record to support them. Section 7(h); Board of Education of Montgomery County v. Paynter, 303 Md. 22, 491 A.2d 1186 (1985); Allen v. Core Target City Youth Program, 275 Md. 68, 338 A.2d 237 (1975). This court may only determine if reasoning minds could reach the same conclusion from the facts and permissible inferences in the record before the Board. Baltimore Lutheran High School Association, Inc. v. Employment Security Administration, 302 Md. 649, 490 A.2d 701 (1985). If the Board's conclusions could be reached by reasoning minds, the decision is based upon substantial evidence and this court has no power to reject that conclusion. Paynter, 303 Md. at 35, 491 A.2d at 1193; Baltimore Lutheran High School, 302 Md. at 662, 490 A.2d at 707-708.

The question for the circuit court to decide is whether the evidence supports the agency findings. A remand for further factfinding is appropriate only after the circuit court reviews the record for substantial evidence and finds it lacking. Juliano v. Lion's Manor Nursing Home, 62 Md. App. 145, 488 A.2d 538 (1985).

Any legal argument that was not raised in the administrative process is foreclosed from appellate review. Department of Economic and Employment Development, et al. v.



Owens, 75 Md. App. 472, 541 A.2d 1324 (1988); Chertkof v. Department of Natural Resources, 43 Md. App. 10, 402 A.2d 1315 (1979).

The determination of the credibility of witnesses' testimony is left to the agency. Board of Appeals, Department of Employment and Training v. Mayor and City Council of Baltimore, 72 Md. App. 427, 530 A.2d 763 (1987); Jacocks v. Montgomery County, 58 Md. App. 95, 472 A.2d 485 (1984).

When faced with conflicting inferences, ". . . it is for the referee to draw the inference, not the reviewing court." Paynter, 303 Md. at 36, 491 A.2d at 1195. "Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inference." Baltimore Lutheran High School, 302 Md. at 663, 490 A.2d at 708.

The administrative findings in this case are supported by competent, material, and substantial evidence contained in the record submitted by the Board. Because no fraud has been alleged, the findings of fact are conclusive, and this court's jurisdiction is confined to questions of law. Section 7(h); Paynter, 303 Md. at 35, 491 A.2d at 1192.

III. The Board's decision allowing Mr. Jones unemployment compensation is supported by substantial evidence and is correct as a matter of law.

A. Facts

James Jones was employed as a property manager and maintenance person by Morris S. Berman from 1987 until his

discharge on October 14, 1988 (R. 15-19).<sup>2</sup> Morris S. Berman has consistently claimed that Mr. Jones was discharged for misconduct or gross misconduct connected with his work.

However, the Hearing Examiner of the Department of Economic and Employment Development, who heard the testimony in the unemployment compensation hearing, held that he did not find sufficient proof of misconduct (R. 95, 96). The Hearing Examiner noted that there was a "personality conflict" between Mr. Jones and Mr. Berman (R. 96). The Board affirmed the Hearing Examiner's decision (R. 102).

In his testimony at the agency hearing, Mr. Berman testified that he discharged Mr. Jones because he did not perform his work in a competent manner, did not return all the tools and because he found Mr. Jones to be insolent. Mr. Berman strongly insinuated that Mr. Jones illegally removed building materials that belonged to Mr. Berman from Mr. Berman's property and that Mr. Jones used those materials for his own use (R. 22-38).

Mr. Jones has consistently denied that he worked in a "sloppy" manner. He also denied that he failed to return tools belonging to Mr. Berman or that he abused any of Mr. Berman's property (R. 1, 49-82).

The letter of discharge terminating Mr. Jones' employment indicated that the basis of the discharge was Mr. Jones'

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<sup>2</sup>The letter "R" refers to the handwritten, numbered pages of the administrative record submitted to this Court by the Board of Appeals.

failure to say "Good morning" to Mr. Berman (R. 92).

B. James Jones was discharged from his employment for a non-disqualifying reason.

The Board found that James Jones' conduct did not constitute gross misconduct or misconduct connected with the work within the meaning of §§6(b) or (c) (R. 102).

This case turns on a credibility determination that was made by the Hearing Examiner. The function of an administrative decision-maker is to assess the credibility of conflicting evidence and reach a conclusion based on substantial evidence. Board of Appeals, Department of Employment and Training v. Mayor and City Council of Baltimore, 72 Md. App. 427, 530 A.2d 763 (1987); Jacocks v. Montgomery County, 58 Md. App. 95, 472 A.2d 485 (1984); Commissioner, Baltimore City Police Department v. Cason, 34 Md. App. 487, 508-509, 386 A.2d 1067, 1079 (1977); Board of Education of Montgomery County v. Paynter, supra; Baltimore Lutheran, supra. The Hearings Examiner had the opportunity to observe the direct and cross examination of Mr. Jones and Mr. Berman, to judge their demeanor, to question them and to make conclusions as to their credibility. He did so and believed the testimony that was offered on behalf of the employee, Mr. Jones. The agency's credibility determination is binding upon the reviewing court. Jacocks v. Montgomery County, 58 Md. App. 95, 472 A.2d 485 (1984).

The Court of Special Appeals of Maryland addressed the issue of credibility findings made by an agency in Jacocks v. Montgomery County, 58 Md. App. 95, 111, 472 A.2d 485, 492

(1984), stating:

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of that fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of the credibility for that made by the agency, and by doing so, reject the fact. (emphasis added)

The issue in this appeal is whether the record contains substantial evidence to support the Board's decision that Mr. Jones' conduct did not constitute misconduct within the meaning of the Unemployment Insurance Law. The Board's decision was made under the legal standard contained in §6(c). "Not every act for which an employee may be dismissed from work will provide a basis for disqualification from unemployment insurance benefits." Hawkins v. District Unemployment Compensation Board, 381 A.2d 619 (D.C. App. 1977).

The burden is on the employer in an unemployment insurance appeal to show that an employee was guilty of misconduct or gross misconduct. Bailey v. Commonwealth, 71 Pa. Cmwlth. 385, 454 A.2d 1182 (1983); Hawkins v. District Unemployment Compensation Board, 381 A.2d 619 (D.C. App. 1977); Porter v. Department of Employment Security, 430 A.2d 450 (Vt. 1981). The party who carries the burden in an administrative proceeding must adduce substantial evidence of probative value to support their case. Goring v. Board of County Commissioners for Anne Arundel County, 244 Md. 106, 223 A.2d 237 (1966).

The Board, who are vested with the discretion to determine what constitutes misconduct, decided after weighing all the evidence, that these facts do not support a finding of misconduct within the meaning of §6(c). It is irrelevant that there might be evidence to support a finding to the contrary. The only inquiry that this Court is to make on review is whether there is substantial evidence to support the conclusion of no misconduct made by the Board. This Court may not substitute its judgment for that of the Board. Paynter, 303 Md. at 36, 491 A.2d at 1195. This Court may only determine whether reasoning minds could have reached the same conclusion reached by the Board, given the facts and permissible inferences in the record before the Board. Baltimore Lutheran High School, 302 Md. 649, 400 A.2d 701.

The Unemployment Insurance Law is a remedial statute intended to prevent economic insecurity and to alleviate the consequences of involuntary unemployment and economic distress. As a remedial law it should be construed, if possible, to accomplish its objective of alleviating economic distress, and be liberally construed in favor of carrying out its purpose. Allen v. Core Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975).

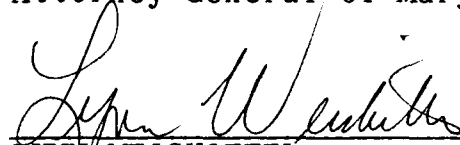
This record and the permissible inferences that may be drawn from it provide the requisite substantial evidence to support the Board's decision to allow Mr. Jones to receive benefits.

IV. Conclusion

Based on the foregoing and the record as a whole, it is respectfully requested that the decision of the Board of Appeals be affirmed.

Respectfully submitted,


J. JOSEPH CURRAN, JR.  
Attorney General of Maryland



LYNN WEISKITTEL  
Assistant Attorney General  
217 E. Redwood Street, Room 1101  
Baltimore, Maryland 21202  
(301) 333-6943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of September, 1989, a copy of the foregoing Memorandum in Support of the Board of Appeals was mailed, postage prepaid, to Morris S. Berman, 4010 Glengyle Avenue, Baltimore, Maryland 21215-1557; and to James Jones, 262 Robert Street, Apartment B1, Baltimore, Maryland 21217.



LYNN WEISKITTEL



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MORRIS S. BERMAN  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557

Employer

vs

BOARD OF APPEALS  
DEPARTMENT OF ECONOMIC AND  
EMPLOYMENT DEVELOPMENT  
217 E. Redwood Street (1119)  
Baltimore, Maryland 21202

AND

JAMES JONES  
262 Robert Street (B1)  
Baltimore, Maryland 21217

Claimant



IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE # 89164046/CL98865

**FILED**

**AUG 23 1988**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

\*\*\*\*\*

MEMORANDUM

Now comes the Employer, Morris S. Berman, in Proper Person and says:

1. That the Employer alleges the allegations made in the Petition and true and correct.

2. That the jurisdiction of this court concerns the law, and that the Hearings Examiner did not apply the law in this case.

3. That the allegations made by the Employer are fact and that the Claimant did not dispute or disprove them in the hearing.

4. That the undisputed facts can be found on the following pages of the record: 18, 22, 24-32, 38, 43-44, 49, 53, 56, 61, 76-79, 85-94.

5. That the Claimant has committed the act of fraud in this action, as evidenced by the statements of fact appearing on the above pages.

WHEREFORE, The Employer prays this Decision be reversed.

Respectfully submitted,

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 1989, I mailed a copy of the foregoing Memorandum to Amy S. Scheer, Esq., 217 E. Redwood Street, 11th floor, Baltimore, MD 21202 and to James Jones, 262 Robert Street, B-1 Baltimore, MD 21217.

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON  
4010 Glengyle Avenue  
Baltimore, MD 21215-1557  
301 764-7444

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**FILED**

**JUL 31 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

MORRIS S. BERMAN,  
Appellant

v.

JAMES E. JONES

and

BOARD OF APPEALS,  
DEPARTMENT OF ECONOMIC  
AND EMPLOYMENT DEVELOPMENT,

Appellees

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\*  
\* No. 89041063/CL92968  
\*  
\*

\* \* \* \* \*

MOTION TO PREVENT ADDITIONAL EVIDENCE

The Board of Appeals, Department of Economic and Employment Development, one of the Appellees herein, requests that Appellant's "Affidavit" filed with this Court on July 27, 1989 be stricken for the following reasons:

1. This appeal is taken from the decision of the Board of Appeals, Department of Economic and Employment Development. As part of its responsibility in this appeal, the Agency has filed an administrative record containing all the evidence considered by the Board of Appeals in making its determination in this case.

2. Appellant filed an "Affidavit" with this Honorable Court on July 27, 1989. This document would be additional evidence to the administrative record previously filed with this Court.

3. The law governing judicial review in this unemployment insurance appeal, Article 95A, §7(h), does not permit additional evidence to be considered by this Court. Instead,

that statute provides for a review on the record:

In any judicial proceeding under this section, the findings of the Board of Appeals as to the facts, if supported by competent, material and substantial evidence in view of the entire record, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to question of law.

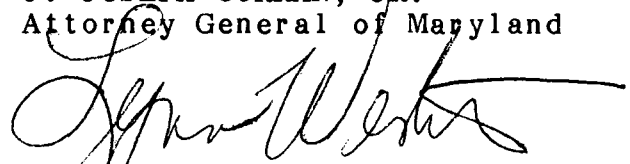
4. In the absence of an allegation or proof of fraud, the findings of fact made by the Board of Appeals, supported by substantial evidence, are conclusive. Fraud has neither been alleged nor proven by the Appellant.

Pursuant to Rule B13, the function of this Court is only to affirm, reverse or modify the action appealed from, remand the case to the agency for further proceedings, or dismiss the appeal. There is no statutory authority for this Court to hear additional evidence or to supplement the record filed by the agency.

WHEREFORE, the Board of Appeals, Department of Economic and Employment Development, prays that the subpoena be quashed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland



---

LYNN WEISKITTEL  
Assistant Attorney General  
217 E. Redwood Street, Room 1101  
Baltimore, Maryland 21202  
(301) 333-6943

MORRIS S. BERMAN,	*	IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
JAMES E. JONES	*	BALTIMORE CITY
and	*	
BOARD OF APPEALS,	*	No. 89041063/CL92968
DEPARTMENT OF ECONOMIC	*	
AND EMPLOYMENT DEVELOPMENT,	*	
Appellees	*	

\* \* \* \* \*

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO PREVENT ADDITIONAL EVIDENCE

I. The decision of the Board of Appeals should be reviewed on the record filed by the administrative agency.

On May 18, 1989, the Board of Appeals of the Department of Economic and Employment Development made a final administrative decision in the above-captioned unemployment insurance case. That decision was appealed to this Honorable Court. Article 95A, §7(h) provides, in pertinent part, that:

In any judicial proceeding under this section, the findings of the Board of Appeals as to the facts, if supported by competent, material and substantial evidence in view of the entire record, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law.

Steamship Trade Association v. Davis, 190 Md. 215, 57 A.2d 818 (1948); Employment Security Board v LeCates, 218 Md. 202, 145 A.2d 840 (1958); Barley v. Maryland Department of Employment Security, 242 Md. 102, 218 A.2d 24 (1966); Board of Education of Montgomery County v. Paynter, 303 Md. 22, 491 A.2d 1186

(1985).

Rule B10 permits additional evidence only when "permitted by law". There are no provisions in the unemployment insurance law for the taking of additional evidence after the Board of Appeals' decision.

The judicial review provisions of Article 95A should be contrasted with the judicial review provisions of the Administrative Procedure Act<sup>1</sup> which allows additional evidence, but only if the party applies for leave to offer additional evidence before the date of the hearing, the evidence is material, and there were good reasons for the failure to offer the evidence in the procedures before the agency. The Court may order the agency to take additional evidence without hearing the evidence itself. On the basis of the additional evidence, the agency may modify its findings and decisions. State Government Article 10-215(e).

After an appeal is taken to the Circuit Court, the only question for the Court to decide is whether the evidence in the record supports the agency's findings.

actions in developing the record in this case were proper and are not reviewable by this Court.

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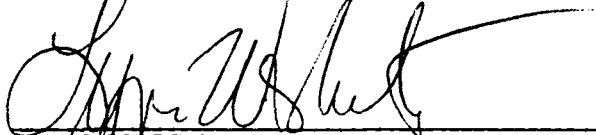
<sup>1</sup>The Board of Appeals of the Department of Economic and Employment Development is exempted from the implications of the Administrative Procedure Act. State Government, Article 10-202(a)(3)(iii).

II. Conclusion

For the above-stated reasons, the Appellant's Motion to Consider Additional Evidence should be denied.

Respectfully submitted,

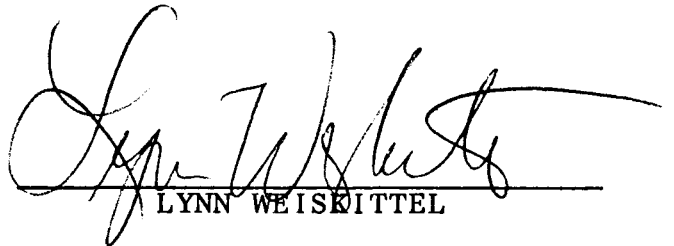
J. JOSEPH CURRAN, JR.  
Attorney General of Maryland



LYNN WEISKITTEL  
Assistant Attorney General  
217 E. Redwood Street, Room 1101  
Baltimore, Maryland 21202  
(301) 333-6943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 1989, a copy of the foregoing Motion to Prevent Additional Evidence, Memorandum of Law in Support and proposed Order of Court were mailed, postage prepaid, to Morris S. Berman, 4010 Glengyle Avenue, Baltimore, Maryland 21215-1557; and to Robert W. MacMeekin, Esquire, 2211 Maryland Avenue, Baltimore, Maryland 21218.



LYNN WEISKITTEL

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

Morris S. Berman .....

Docket: .....

Board of Appeals, Dept. of Economic  
and Employment Development

Folio: .....

File: 89164046/CL98865

Date of Notice: 7/31/89

STATE OF MARYLAND, ss:

31st

July

I HEREBY CERTIFY, That on the ..... day of .....

Nineteen Hundred and eighty-nine ....., I received from the Administrative Agency, the record, in the above captioned case.

{5}

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

Morris S. Berman .....

Docket: .....

vs.  
Board of Appeals, Dept. of Economic  
and Employment Development

Folio: .....

File: 89164046/CL98865

Date of Notice: 7/31/89

STATE OF MARYLAND, ss:

31st

July

I HEREBY CERTIFY, That on the ..... day of .....

Nineteen Hundred and eighty-nine ....., I received from the Administrative Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

for



Amy S. Scherr  
Assistant Attorney General  
217 E. Redwood Street  
Baltimore, Maryland 21202

Morris S. Berman  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557

J. JOSEPH CURRAN, JR.  
Attorney General  
JUDSON P. GARRETT, JR.  
DENNIS M. SWEENEY  
Deputy Attorneys General  
ARTHUR S. DREA, JR.  
Assistant Attorney General  
Counsel to the Department  
ALEXANDER WRIGHT, JR.\*  
Assistant Attorney General  
Deputy Counsel to the Department

OFFICES OF  
THE ATTORNEY GENERAL



STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

AMY S. SCHERR\*  
BARBARA G. SWAIN  
LAILA K. ATALLAH  
THOMAS P. CARBO  
BARBARA CURNIN KOUNTZ  
ELIZABETH S. ROESE  
LYNN M. WEISKITTEL\*  
JAMES G. DAVIS  
Assistant Attorneys General

ILENE S. GARTEN  
Staff Attorney  
217 E. Redwood Street  
Baltimore, Maryland 21202  
(301) 333-4813  
(301) 333-6943\*  
Fax: (301) 333-8298

July 27, 1989

FILED

JUL 31 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

Morris S. Berman  
4010 Glengyle Avenue  
Baltimore, MD 21215-1557

Re: #89164046/CL98865

Dear Mr. Berman:

Enclosed is a copy of the administrative record before the Board of Appeals in the above-captioned appeal. This record has been filed with the Clerk of the Circuit Court for Baltimore City.

Maryland Rule B12 requires that you file with the Court a Memorandum setting forth a concise statement of the issues raised by your appeal and legal arguments in support of your position, referencing the enclosed record. The rule provides a thirty (30) day period for filing the Memorandum. The period begins when you receive notification from the Clerk of the Court that the record has been filed. A copy of the Memorandum you filed with the Clerk of the Court must be sent to this office.

Please be further advised that unless a memorandum is filed with the Court in accordance with Rule B12, the Board of Appeals will file a Motion to Dismiss your appeal.

Sincerely,

Amy S. Scherr  
Assistant Attorney General

AS:dw  
Enclosures

cc: Sandra E. Banks, Clerk  
James Jones

P.S. - Clerk: Please file the original Administrative Record attached hereto.

### **Rule B12. Memoranda.**

Within 30 days after being notified by the clerk of the filing of the record, the appellant shall file a memorandum setting forth a concise statement of all issues raised on appeal and argument on each issue, including citations of legal authorities and references to pages of the transcript and exhibits relied on. Within 30 days thereafter any other party desiring to be heard, including the appropriate agency when entitled by law to be a party to the appeal, shall file an answering memorandum in the same form. The appellant may file a reply memorandum within 15 days after the filing of any answering memorandum. This Rule shall not apply to appeals from the Workmen's Compensation Commission.

(Added Oct. 1, 1980, effective Jan. 1, 1981.)

**FILED**

**JUL 31 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

MORRIS S. BERMAN

vs.

JAMES JONES

and

BOARD OF APPEALS  
Department of Economic  
and Employment Development

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* #89164046/CL98865  
\*

RECORD BEFORE THE

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS



**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) 333-5033

MORRIS S. BERMAN : RECORD BEFORE THE  
 vs. : DEPARTMENT OF  
 JAMES JONES : ECONOMIC AND EMPLOYMENT  
 and : DEVELOPMENT  
 BOARD OF APPEALS : APPEAL NO. 8813786  
 Department of Economic and  
 Employment Development

THIS IS TO CERTIFY that the following is a true copy, to  
 the best of our knowledge, of all documents and papers, and  
 transcript of all testimony taken in the matter, together with  
 findings of fact and decision therein, this 27<sup>th</sup> day  
July, 1989.

STATE OF MARYLAND  
 DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT

BY: *Paul G. Zimmerman*  
 Paul G. Zimmerman, Appeals Counsel  
 BOARD OF APPEALS

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STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
OFFICE OF UNEMPLOYMENT INSURANCE

21257  
**RECEIVED**

**FACT FINDING REPORT**

Date Conducted 102888  Unresolved Issue (H02)  
 Claimant's Name James E. Jones  Create and Resolve Issue (H03)  
 Social Security Number 21242 2933  Redetermination/Corrected Determination (H05)  
 Issue: Discharge or Suspension From Work OFFICE OF THE ASSISTANT ATTORNEYS GENERAL

JUL 25 1989

**CLAIMANT'S STATEMENT**

Claimant present? YES  NO  If not, how contacted?  
 Name of employer: Morris B. Bermer  
 FDW: 101987 LDW: 101488 Rate of Pay: \_\_\_\_\_ Name of immediate supervisor: Morris Bermer  
 Name and title of person who notified you of your discharge: Morris Bermer - Owner  
 What reason were you given for your discharge? Because I refused to say good morning to Mr. Bermer  
 Did you agree with this reason? YES  NO  If no, explain: We don't see each other in the morning

In relation to the reason for discharge, did you receive any:  
 verbal warnings? YES  NO  How many? \_\_\_\_\_ Date of most recent warning: \_\_\_\_\_  
 written warnings? YES  NO  How many? \_\_\_\_\_ Date of most recent warning: \_\_\_\_\_  
 suspensions from work? YES  NO  How many? \_\_\_\_\_ Date of most recent suspension: \_\_\_\_\_

Did you protest your discharge? YES  NO   
 Additional information: I began employment with Morris Bermer on October 19, 1987 as a maintenance person. I worked up until October 14, 1988. I was notified by letter on September 30, 1988, that October 14, 1988 would be my last day of work. The reason given to me was because I didn't say good morning to Mr. Bermer each morning. I feel the real reason for my being let go was because I had asked for a raise.

Are you able, available and actively seeking full-time work? YES  No  If no, explain: \_\_\_\_\_

CLAIMANT'S REBUTTAL: Returned in all tools to Mr. Bermer that he loaned to me. I feel my work was not done. I worked for Mr. Jones as a Key Carpenter. The burden of question belongs to Mr. Jones. I feel Mr. Bermer was highly prejudiced. All the information given on 207A by the Employer was after the fact.

I have read and hereby affirm under penalties of perjury that the foregoing information is true and correct to the best of my knowledge, information and belief.  
 Claimant's Signature James E. Jones

JK

FACT FINDING REPORT

EMPLOYER'S STATEMENT

Name of employer/company: Morris A. Berman Employer present? YES  NO

Separation notice received: 102788 2071 Employer letter  Other

LDW: 101488 Reason for separation from above: Discharged - Tools and materials disappeared, work was stopped, kept my truck and he was insupport

Employer contacted by phone? YES  NO  Telephone Number: 486-1963

Name of company officer: Mr. Morris Berman Position/title: Owner

Claimant present when telephone information was received? YES  NO

Was the claimant discharged for a violation of written company policy? YES  NO  If yes, specify: \_\_\_\_\_

In relation to the reason for discharge, was the claimant:

warned verbally? YES  NO  How many times? \_\_\_\_\_ Dates of warnings: \_\_\_\_\_

warned in writing? YES  NO  How many times? \_\_\_\_\_ Dates of warnings: \_\_\_\_\_

suspended from work? YES  NO  How many times? \_\_\_\_\_ Dates of suspensions: \_\_\_\_\_

Additional information: Employee was contacted by telephone on 11/92/88. Mr. Berman provided all information given on 2071. He also stated that he gave the claimant a letter on 09/30/88 mainly to get him out of this office, for the claimant threatened him.

If the reason for discharge was absenteeism or lateness:

Number of days absent: \_\_\_\_\_ Dates: \_\_\_\_\_

Number of days late: \_\_\_\_\_ Dates: \_\_\_\_\_

Was the company properly notified of the absences/lateness? YES  NO

Was medical certification provided if requested? YES  NO  If no, explain: \_\_\_\_\_

Were the absences/lateness authorized? YES  NO

ADDITIONAL INFORMATION

Examiner's note: Per call to employer on 11/02/88 - Mr. Berman "thruited" through the entire telephone call I was really unable to get any specifics - Mr. Berman also requested a hearing and that he would protect my benefits paid to this claim.

BENEFIT DETERMINATION

SSN 212 42 2933 0 Name Check J J O N

Sequence Number: 01 Issue Code 50 Program: 0 Java: \_\_\_\_\_

Resolution Code: \_\_\_\_\_ Penalty? \_\_\_\_\_ Count? \_\_\_\_\_ Time Lapse: \_\_\_\_\_

Statement Number: \_\_\_\_\_ Text Date 101488 Examiner ID: 0103J

Employer Number: 18854856 Non-Charge? \_\_\_\_\_ Non-Charge Start Date: \_\_\_\_\_

Start Date: \_\_\_\_\_ Disq. Weeks: \_\_\_\_\_ OP Source: \_\_\_\_\_ OP Fault: \_\_\_\_\_

Redet/Corr. Det. Reason: \_\_\_\_\_

Date Completed \_\_\_\_\_ Claims Examiner: [Signature]



NOTICE TO APPEALS DIVISION OF LOWER APPEAL

SSN: 212 42 2933 DATE RECEIVED/TAKEN BY LO: 12/19/88 ENTRY DATE: 12/21/88

LO: 01 PROGRAM TYPE: 00 BYB: 10/16/88 SPECIALIST ID: 01031

DATE OF APPEAL: 12/19/88 APPEAL DEADLINE: 12/30/88 TIMELY APPEAL? Y

LATE APPEAL REASON:

APPELLANT: CLAIMANT MULTIPLE APPEALS? N TYPE OF APPEAL: INTRASTATE

ISSUE: DISCHARGED FROM EMPLOYMENT

13786

COMMENTS:

CLAIMANT: JAMES E JONES  
ADDRESS: 262 ROBERT ST B1

TELEPHONE: 301 669 2626

BALTO MD 21217-0000

EMPLOYER: BERMAN, MORRIS S  
ADDRESS: FIRST FLOOR REAR  
4010 GLENGYLE AVE  
BALTO

TELEPHONE: 301 764 7444

MD 21215-0000

APPELLANT REPRESENTATIVE:  
REPRESENTATIVE ADDRESS:  
REPRESENTATIVE TELEPHONE:

BENEFIT DETERMINATION

THE CLAIMANT WAS DISCHARGED OR SUSPENDED AS A DISCIPLINARY MEASURE BY BERMAN, MORRIS S ON 10/14/88 BECAUSE OF CARELESSNESS. THE CLAIMANT'S ACTIONS DO NOT SHOW A DELIBERATE AND WILLFUL DISREGARD OF STANDARDS OF BEHAVIOR WHICH HIS/HER EMPLOYER HAD A RIGHT TO EXPECT, SHOWING A GROSS INDIFFERENCE TO HIS/HER EMPLOYER'S INTEREST. HOWEVER, THE CLAIMANT'S ACTIONS DO CONSTITUTE MISCONDUCT IN CONNECTION WITH THE WORK WITHIN THE MEANING OF SECTION 6(C) OF THE MARYLAND UNEMPLOYMENT INSURANCE LAW.

- ( ) BENEFITS ARE ALLOWED.
- (X) BENEFITS ARE DENIED WEEK BEGINNING 10/09/88 AND FOR THE 09 WEEKS ENDING 12/17/88
- ( ) BENEFITS ARE DENIED WEEK BEGINNING AND UNTIL THE CLAIMANT BECOMES REEMPLOYED AND EARNS AT LEAST TEN (10) TIMES HIS/HER WBA
- ( ) BENEFITS ARE DENIED WEEK FROM TO
- ( ) BENEFITS ARE DENIED WEEK BEGINNING UNTIL MEETING REQUIREMENTS OF THE LAW.
- ( ) AS A RESULT OF THIS DETERMINATION, THE CLAIMANT IS FOUND TO HAVE RECEIVED BENEFITS FOR WHICH HE/SHE WAS INELIGIBLE. THIS CREATES AN OVERPAYMENT TOTTALLING WHICH MUST BE REPAID.

STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
OFFICE OF UNEMPLOYMENT INSURANCE

**REQUEST FOR APPEAL HEARING**

I wish to appeal the determination dated 12-15-88 written under section (6b)(6c) of the law because All information is after the fact. Nothing is specific as to the original cause of termination as of 10-14-88 (no problems, reprimands, complaint, etc.)  
Reason, if late appeal: \_\_\_\_\_

I understand that I must continue to file claims for each week that I am unemployed pending the outcome of my appeal.

James E. Jones 212-42-2933  
Claimant's Signature Social Security Number  
49 12-19-88  
Witness Date

**REQUEST FOR LOWER APPEAL (101)**

SSN 212 42 2933 0 Name Check U U O N

New Address \_\_\_\_\_  
\_\_\_\_\_  
CITY STATE ZIP CODE

Date of Appeal 12/19/88 Late Appeal?

Late Appeal Reason \_\_\_\_\_

Type of Appeal  Appellant Code  Resolution Code STO

Sequence Number 01 Multiple Appeals?

Comments \_\_\_\_\_

Date appeal forwarded to Appeals Division 12/21/88

Appellant Representative \_\_\_\_\_

Representative Address \_\_\_\_\_

\_\_\_\_\_  
CITY STATE ZIP CODE

Representative Phone \_\_\_\_\_

**TYPE OF APPEAL CODES**  
1 Intrastate  
2 Liable State  
3 Agent State

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
JAMES E. JONES	BERMAN, MORRIS S	01/09/89	8813786	212-42-2935

Appellant: CLAIMANT

Local Office No. L01

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 19 1989 at 11:30 A. M. EST (Please be on time)  
JANUARY, (NINETEENTH) 1989

Location: DEPT. OF ECONOMIC & EMPLOYMENT  
DEVELOPMENT- APPEALS DIVISION  
1100 NORTH EUTAW STREET RM 511  
BALTIMORE, MD 21201

Hearing Examiner:  
J. MARTIN WHITMAN

Mail To: JAMES E. JONES  
262 ROBERT ST. B1  
BALTIMORE, MD 21217

NOTICE TO PARTIES If you have already received benefits, a partial or total disqualification may be imposed by the Hearing Examiner. If this occurs, you may be required to pay back some or all of the benefits received.

THIS HEARING IS THE LAST STEP AT WHICH EITHER THE CLAIMANT OR THE EMPLOYER HAS THE ABSOLUTE RIGHT TO PRESENT EVIDENCE. THE DECISION WILL BE MADE ON THE EVIDENCE PRESENTED. THE DECISION WILL AFFECT THE CLAIMANT'S CLAIM FOR BENEFITS, AND IT MAY AFFECT THE EMPLOYER'S CONTRIBUTION TAX RATE OR REIMBURSEMENT ACCOUNT.

Whether the claimant is able, available and actively seeking work within the meaning of Section 4(c) of the Law is always an issue that may be ruled on by the Hearing Examiner.

See the other side of this notice for important information.

PLEASE BRING THIS NOTICE WITH YOU.

Issue: WHETHER THE CLAIMANT WAS SUSPENDED OR DISCHARGED FOR MISCONDUCT, OR GROSS MISCONDUCT, WITHIN THE MEANING OF SECTION 6(B) OR 6(C) OF THE LAW. (SECTION 6(A) MAY ALSO APPLY. SEE OTHER SIDE FOR SECTION 6 ISSUES.)

h0

## INFORMATION FOR PARTIES TO THE APPEAL HEARING

### WITHDRAWAL OF APPEAL

The party who filed the appeal may withdraw it at any time before the hearing if the Administrative Officer approves. If you do not wish to proceed with your appeal, you may request withdrawal by letter, or on Form DEED/OUI/AD 379, which is available from the Claims Specialist in the Local Office, or from the Appeals Division in Room 511, 1100 North Eutaw Street, Baltimore, Maryland 21201.

### HEARINGS, ISSUES, AGENTS AND ATTORNEYS

The Hearing Examiner will try to develop all of the facts of this case in order to give a fair hearing to all parties, but the Hearing Examiner will not conduct an investigation, contact witnesses not brought to the hearing or obtain documents which are not brought into the hearing by the parties. The only exception is for Department of Economic and Employment Development records, which you will have the right to see.

The Hearing Examiner will consider the issues in the Claims Examiner's determination which have been appealed. Also, the Hearing Examiner will rule on any issue which may develop in the course of the hearing concerning the Claimant's eligibility for benefits, if it is fair to both parties to do so in the circumstances of each case.

You may be represented by an attorney, or other authorized agent. You must pay your attorney his legal fee, but attorneys representing a claimant may not charge more than the fee approved by the Board of Appeals.

### WITNESSES AND SUBPOENAS

Each party should arrange for all necessary witnesses to attend the hearing, and for all necessary documents to be presented at the hearing. When witnesses will not come voluntarily, or documents will not be produced voluntarily, you may request a subpoena from the Administrative Officer. This request must be in writing and must be received by the Administrative Officer at least three working days before the date of the hearing. The request must also give the name of the person to be subpoenaed, the address to which you want the subpoena delivered, and the name of the Maryland county where the person to be subpoenaed resides or is employed. Regarding records being subpoenaed, the request must include a description of the documents to be subpoenaed as well as the name of the custodian of the records, the address to which you want the subpoena delivered, and the name of the Maryland county where the custodian of the records is located. The Administrative Officer has the power to allow or to deny a request, or to allow part of a request.

If you request a subpoena, you should call the Administrative Officer to see if your request was granted. Subpoenas are served by the sheriffs of Baltimore City or the different counties in Maryland. If the Administrative Officer grants a request and issues a subpoena, you should check with the sheriff to find out if the subpoena was actually served. If it was not served, you should contact the Administrative Officer *immediately*.

### TABLE OF PENALTIES UNDER SECTION 6

SECTION OF LAW	QUESTION	IF THE ANSWER IS YES, THE POSSIBLE PENALTY IS:
6(a)	Did the Claimant voluntarily quit his employment without good cause?	From a 5 week disqualification up to a total disqualification*
6(b)	Was the Claimant suspended or discharged for gross misconduct?	Total disqualification*
6(c)	Was the Claimant suspended or discharged for misconduct?	From a 5 week disqualification up to a 10 week disqualification
6(d)	Did the Claimant refuse available, suitable work or fail to apply for it, without good cause?	From a 5 week disqualification up to a total disqualification*

\*A total disqualification lasts until the Claimant is employed again, earns at least ten times his weekly benefit amount, and then becomes unemployed again through no fault of his own.

ALL penalties under Sections 6(a), (b), (c) or (d) will result in ineligibility for Extended Benefits, and Federal Supplemental Compensation, unless the Claimant is reemployed after the date of the disqualification.

### POSTPONEMENT OF HEARING

If you need a postponement of the hearing, you must request it in writing from the Administrative Officer at least three working days before the date of the hearing. The Administrative Officer will grant a postponement only if he agrees that you have good cause for postponement. If you are not sure whether or not your case has been postponed, you may find out by contacting the Administrative Officer.

### DISMISSAL

This appeal may be dismissed if the appealing party does not appear on time for the hearing.

### INQUIRIES

For further information, you may contact the Administrative Officer at 333-5040.

### HEARING RULES

The hearing rules are found in Section 7 of Articles 95A of the Annotated Code of Maryland and Section 24.02.06 of the Code of Maryland Agency Regulations.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
JAMES E. JONES	BERMAN, MORRIS S	01/09/89	8813785	212-42-2933

Appellant: CLAIMANT

Local Office No. 001

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 19 1989 at 11:30 A.M. EST (Please be on time)  
JANUARY, (NINETEENTH) 1989

Location:

DEPT. OF ECONOMIC & EMPLOYMENT  
DEVELOPMENT- APPEALS DIVISION  
1100 NORTH EUTAW STREET RM 511  
BALTIMORE, MD 21201

Hearing Examiner:

J. MARTIN WHITMAN

Mail To:

BERMAN, MORRIS S  
FIRST FLOOR REAR  
4010 GLENGYLE AVE.  
BALTIMORE, MD 21215

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Whether the claimant is able, available and actively seeking work within the meaning of Section 4(c) of the Law is always an issue that may be ruled on by the Hearing Examiner.

See the other side of this notice for important information.

PLEASE BRING THIS NOTICE WITH YOU.

Issue:

WHETHER THE CLAIMANT WAS SUSPENDED OR DISCHARGED FOR MISCONDUCT, OR GROSS MISCONDUCT, WITHIN THE MEANING OF SECTION 6(B) OR 6(C) OF THE LAW. (SECTION 5(A) MAY ALSO APPLY. SEE OTHER SIDE FOR SECTION 6 ISSUES.)

2/2/89  
W

2/1

B.P. 1/1/89

**MORRIS S. BERMAN**

4010 Glengyle Avenue • Baltimore, Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

January 10, 1988

Appeals Division  
1100 N. Eutaw St. Room 511  
Balto. MD 21201

RECEIVED  
JAN 13 1988

Att: Mr. Wolf

Re: Hearing on James E. Jones  
1-19-89 11:30

42  
212-62-2933

Dear Mr. Wolf,

As per our conversation today, enclosed please find a copy of the notice for my hearing in District Court on the 19th. Please postpone this hearing for one day at 9:00 AM so that I may bring my witnesses to court with me. A copy of my February dates are enclosed. I understand that the 2nd 7th or 8th may be available and that is fine.

Yours,

*Morris S. Berman*  
Morris S. Berman

06

# FEBRUARY

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**75¢ Off MUNCHKINS®**

DONUT HOLE TREATS

75¢ Off a box of 45 or 60

One coupon per customer per visit. Available at participating Dunkin' Donuts® shops. Offers cannot be combined. Shop must retain coupon. Taxes not included.



**6 FREE Croissants**

when you buy 6 Croissants at the regular

price. Not available on Croissant Sandwiches.

Alternate offer: 50¢ Off any purchase of \$2.00 or more if Croissants are not available. One coupon per customer per visit. Available at participating Dunkin' Donuts® shops. Offers cannot be combined.



RECEIVED DEC 6 1988



DISTRICT COURT OF MARYLAND FOR

Balto  
City/County

Located at Fayette & Gay  
Court Address

Case No. 019-31189-38

W.S. Beaman  
Plaintiff/Judgment Creditor

VS.

Thomas A. Williams  
Defendant/Judgment Debtor

Trial Date 1/19/89 Issue Date 11/21/88

Expiration Date 12/2/88

Received from County

REQUEST FOR SERVICE

Case No.

Please serve the attached process on the person shown.

Type of Paper Affidavit

ORDER FOR SERVICE

If service is not effected, send refund to:

You are hereby commanded to serve the attached process and to make your return promptly on this Order if served, and if you are unable to serve, you are to make your return on this Order and return the original process to the Court no later than ten days following the termination of the validity of the process.

11/21/88 Date W.M. Hall Clerk

PROOF OF SERVICE

I CERTIFY

I that I served a Summons by restricted delivery mail, return card attached delivery to Thomas A. Williams

Lincoln  
Certified mail

Description of Defendant: Race Sex Ht.

Wt. Age Other

I and left with him a copy of the Complaint and all supporting papers.

I I posted the premises at

I I was unable to serve because

I I served the Writ of Garnishment on Wages on the Garnishee by restricted delivery mail, return card attached delivery to

I I served the Writ of Garnishment on Property on the Garnishee by restricted delivery mail, return card attached delivery to

and promptly after service mailed a copy of the Writ to the Judgment Debtor's last known address.

I I served an Order to Appear for Oral Examination in Aid of Enforcement by restricted delivery mail, return card attached delivery to

I I served a Show Cause Order by restricted delivery mail, return card attached delivery to

If return is made by an individual other than a sheriff or constable, I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief and do further affirm I am a competent person over 18 years of age and not a party to the case.

12-5-88 Date W.M. Hall Signature

Address if Private Process Server

Telephone Number if Private Process Server

Plaintiff Thomas S. Beaman

Plaintiff's Attorney

Address 4019 Glenayle Ave

City, State, Zip Balto Md 21215-1551

Defendant Thomas A. Williams

Address c/o Roy Menco

City, State, Zip Balto MD 21215

Garnishee/Agent

Address

City, State, Zip

Special Instructions

ATTEMPT	
1	Date/Time
2	Date/Time
3	Date/Time
4	Date/Time



CASE NAME J. JONES APPEAL # 13786  
DATE 1/10/89 ADMINISTRATIVE OFFICER W. J. [Signature]

PERSON CALLING

- CLAIMANT
- EMPLOYER *Miss Berman*
- ATTORNEY (CLAIMANT)
- EMPLOYER'S ATTY/  
REPRESENTATIVE

POSTPONEMENT

- GRANTED
- DENIED
- LETTER  
REQUESTED -  
REASON FOR  
REQUEST FOR  
POSTPONEMENT

ACTION TAKEN

- CLAIMANT CONTACTED
- EMPLOYER CONTACTED
- CLAIMANT'S ATTY CONTACTED
- EMPLOYER'S ATTY/REP CONTACTED

COMMENTS:

Unavailable - Rescheduled Ct. Dates  
If possible Reset Feb 2, 7, 9th  
at 9:AM.

**DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT**

APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137  
OUTSIDE OF MARYLAND: 1-800-638-6010

**NOTICE OF POSTPONEMENT**

Claimant's Name **JAMES E. JONES** Employer's Name **BERMAN, MORRIS S** Date Mailed **01/11/89** Appeal No. **8813786** SS No. **212-42-2933**

Requesting Party: **EMPLOYER**

Dear **JAMES E. JONES**

A request for a postponement of the hearing in this case, which was scheduled before the Hearing Examiner on 01/19/89

in BALTIMORE at 11:30 A M. EST has been granted.

All parties will be notified when this hearing is rescheduled.

Mail To:

**JAMES E. JONES  
262 ROBERT ST. B1  
BALTIMORE, MD 21217**

cc:

**BERMAN, MORRIS S  
FIRST FLOOR REAR  
4010 GLENGYLE AVE.  
BALTIMORE, MD 21215**

**DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT**

APPEALS DIVISION - ROOM 511  
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FIRST FLOOR REAR  
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BALTIMORE, MD 21215**

cc: **JAMES E. JONES  
262 ROBERT ST. B1  
BALTIMORE, MD 21217**

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
JAMES E. JONES	BERMAN, MORRIS S	01/20/89	1213786	212-42-2933

Appellant: CLAIMANT

Local Office No. 001

A hearing on this appeal will be held before the Hearing Examiner on ~~FEBRUARY, 2 1989~~ at ~~09:00~~ ~~A.M.~~ ~~EST~~ (Please be on time)  
~~FEBRUARY, (SECOND) 1989~~

Location: DEPT. OF ECONOMIC & EMPLOYMENT  
DEVELOPMENT- APPEALS DIVISION  
1100 NORTH EUTAW STREET RM 511  
BALTIMORE, MD 21201

Hearing Examiner:  
GERALD ASKIN

Mail To: JAMES E. JONES  
262 ROBERT ST. 81  
BALTIMORE, MD 21217

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Whether the claimant is able, available and actively seeking work within the meaning of Section 4(c) of the Law is always an issue that may be ruled on by the Hearing Examiner.

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PLEASE BRING THIS NOTICE WITH YOU.

Issue: WHETHER THE CLAIMANT WAS SUSPENDED OR DISCHARGED FOR MISCONDUCT, OR GROSS MISCONDUCT, WITHIN THE MEANING OF SECTION 6(B) OR 6(C) OF THE LAW. (SECTION 6(A) MAY ALSO APPLY. SEE OTHER SIDE FOR SECTION 6 ISSUES.)

## INFORMATION FOR PARTIES TO THE APPEAL HEARING

### WITHDRAWAL OF APPEAL

The party who filed the appeal may withdraw it at any time before the hearing if the Administrative Officer approves. If you do not wish to proceed with your appeal, you may request withdrawal by letter, or on Form DEED/OUI/AD 379, which is available from the Claims Specialist in the Local Office, or from the Appeals Division in Room 511, 1100 North Eutaw Street, Baltimore, Maryland 21201.

### HEARINGS, ISSUES, AGENTS AND ATTORNEYS

The Hearing Examiner will try to develop all of the facts of this case in order to give a fair hearing to all parties, but the Hearing Examiner will not conduct an investigation, contact witnesses not brought to the hearing or obtain documents which are not brought into the hearing by the parties. The only exception is for Department of Economic and Employment Development records, which you will have the right to see.

The Hearing Examiner will consider the issues in the Claims Examiner's determination which have been appealed. Also, the Hearing Examiner will rule on any issue which may develop in the course of the hearing concerning the Claimant's eligibility for benefits, if it is fair to both parties to do so in the circumstances of each case.

You may be represented by an attorney, or other authorized agent. You must pay your attorney his legal fee, but attorneys representing a claimant may not charge more than the fee approved by the Board of Appeals.

### WITNESSES AND SUBPOENAS

Each party should arrange for all necessary witnesses to attend the hearing, and for all necessary documents to be presented at the hearing. When witnesses will not come voluntarily, or documents will not be produced voluntarily, you may request a subpoena from the Administrative Officer. This request must be in writing and must be received by the Administrative Officer at least three working days before the date of the hearing. The request must also give the name of the person to be subpoenaed, the address to which you want the subpoena delivered, and the name of the Maryland county where the person to be subpoenaed resides or is employed. Regarding records being subpoenaed, the request must include a description of the documents to be subpoenaed as well as the name of the custodian of the records, the address to which you want the subpoena delivered, and the name of the Maryland county where the custodian of the records is located. The Administrative Officer has the power to allow or to deny a request, or to allow part of a request.

If you request a subpoena, you should call the Administrative Officer to see if your request was granted. Subpoenas are served by the sheriffs of Baltimore City or the different counties in Maryland. If the Administrative Officer grants a request and issues a subpoena, you should check with the sheriff to find out if the subpoena was actually served. If it was not served, you should contact the Administrative Officer *immediately*.

### TABLE OF PENALTIES UNDER SECTION 6

SECTION OF LAW	QUESTION	IF THE ANSWER IS YES, THE POSSIBLE PENALTY IS:
6(a)	Did the Claimant voluntarily quit his employment, without good cause?	From a 5 week disqualification up to a total disqualification*
6(b)	Was the Claimant suspended or discharged for gross misconduct?	Total disqualification*
6(c)	Was the Claimant suspended or discharged for misconduct?	From a 5 week disqualification up to a 10 week disqualification
6(d)	Did the Claimant refuse available, suitable work or fail to apply for it, without good cause?	From a 5 week disqualification up to a total disqualification*

\*A total disqualification lasts until the Claimant is employed again, earns at least ten times his weekly benefit amount, and then becomes unemployed again through no fault of his own.

ALL penalties under Sections 6(a), (b), (c) or (d) will result in ineligibility for Extended Benefits, and Federal Supplemental Compensation, unless the Claimant is reemployed after the date of the disqualification.

### POSTPONEMENT OF HEARING

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### DISMISSAL

This appeal may be dismissed if the appealing party does not appear on time for the hearing.

### INQUIRIES

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### HEARING RULES

The hearing rules are found in Section 7 of Articles 95A of the Annotated Code of Maryland and Section 24.02.06 of the Code of Maryland Agency Regulations.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
JAMES E. JONES	BERMAN, MORRIS S	01/20/89	8613785	212-42-2955

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Local Office No. 001

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1100 NORTH EUTAW STREET RM 511  
BALTIMORE, MD 21201

Hearing Examiner:  
GERALD ASKIN

Mail To: BERMAN, MORRIS S  
FIRST FLOOR REAR  
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Time: 90

STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
APPEAL ATTENDANCE RECORD

Room: \_\_\_\_\_ Hearings Officer: Astlin Date: 2.2.89 Present

Claimant: James E. Jones ✓ Time: \_\_\_\_\_

Represented By: \_\_\_\_\_

Witnesses: \_\_\_\_\_

Employer: Bernard Morris ✓ Time: \_\_\_\_\_

Represented By: \_\_\_\_\_

Witnesses: \_\_\_\_\_

114



DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

TRANSCRIPT OF TESTIMONY

Heard before

Gerald E. Askin

Hearings  
Examiner

in the case

James E. Jones  
262 Robert Street  
Apartment B-1  
Baltimore, MD 21217

S.S. #212-42-2933

Appeal #8813786

Morris S. Berman  
4010 Glengyle Avenue  
First Floor Rear  
Baltimore, MD 21215

---

APPEARANCES

James E. Jones - claimant  
Patricia Barwick - Repre.  
Thelma E. Jones - witness

Morris Berman -  
Proprietor  
George Jones - employee/  
witness

Gerald E. Askin  
Hearings Examiner

---

TIME: 09:00 A.M.  
DATE: February 2, 1989  
PLACE: Baltimore, MD

---

TRANSCRIBED BY: ALICE MARIE COOPER

Let me explain to you what this is all about. Firstly, this is what is known as an administrative hearing. An administrative hearing means a governmental type of fact finding hearing. My responsibility as a hearings examiner is to determine the facts involved in Mr. Jones' separation from his employment with Morris Berman. I am a finder of facts. Once I find the facts to my satisfaction, my responsibility is to apply the Maryland Unemployment Insurance Law to the facts that I find and then make a decision on Mr. Jones' appeal. I am strictly guided by the Maryland Unemployment Insurance Law as to whatever decision I do make. The hearing is being recorded on a cassette. All witnesses will be testifying under oath just as if you were testifying in court. Anything Mr. Berman testifies to, Mr. Jones, you have the right to ask him any questions if you want to. And, likewise, anything you might testify to or your wife, Mr. Berman has a right to ask you any questions if he wants to. That's what is known as cross examination. Mr. Jones, do you have any questions about the procedure of the hearing you'd like to ask me before we start?

Mr. Jones: None about the proceedings.

Hearings Examiner: Okay. You, Mr. Berman, any questions?

Mr. Berman: No, sir.

Hearings Examiner: Now, Mr. Jones, before we get into the hearing, I want to bring one very important thing to your attention. You were disqualified for a ten week period under a section of the law known as

Section 6(c). And that penalty ended December the 17th, 1988, which means as of December the 18th, 1988 if you're still unemployed and meeting other eligibility requirements of the law, you'd have been eligible to draw benefits. In fact, if you stayed unemployed, you'd still be entitled to your full twenty-six weeks of benefits. Now, this appeal today is what we call in law, a de novo hearing. De novo is a latin legal expression. And the best way I can translate it in everyday talk is we're talking from scratch today. Now - which means there's a certain risk involved for you. Based on the facts that come before me today, and I have no idea what the facts are at this point in time, but, based on the facts that come before me, it could possibly - a decision could possibly be rendered under a section of the law known as Section 6(b), which deals with gross misconduct, which carries a much stiffer disqualification.

Mr. Jones:

I understand.

Hearings Examiner:

Okay. Knowing that risk, do you still want to go ahead?

Mr. Jones: Yes, sir.

Hearings Examiner: Okay. That's certainly your right, but I just want to make sure you understand...

Mr. Jones: I had ample time to make the decision.

Hearings Examiner: Okay. Fine. Okay. Uhm, Mr. Jones, Mrs. Jones, Mr. Berman and Mr. George Jones, ...OATH ADMINISTERED

All Parties: I do.

Hearings Examiner: All right. Let the record show that all parties affirmed the oath. Mr. James Jones, are you now employed?

Mr. J. Jones: No, I am.

Hearings Examiner: Okay. Was Mr. Berman your last employment?

Mr. J. Jones: That is correct.

Hearings Examiner: Do you recall the date you originally began working for Mr. Berman?

Mr. J. Jones: Uhm, October of '87.

Hearings Examiner: All right. Do you recall the date of your last day of work?

Mr. J. Jones: October 14th, '88.

Hearings Examiner: As of October 14th, '88, what was your job with Mr. Berman?

Mr. J. Jones: Just a laborer.

Hearings Examiner: Okay. Were you a full time or parttime employee?

Mr. J. Jones: Full time.

Hearings Examiner: Were you paid a salary, paid on an hourly basis or how...

Mr. J. Jones: I was paid by the hour.

Hearings Examiner: What was your last hourly rate of pay?

Mr. J. Jones: \$6.50.

Hearings Examiner: Was Mr. Berman your supervisor?

Mr. J. Jones: I would say as far as who I answered to to the office, he was my supervisor.

Hearings Examiner: Okay.

INTERRUPTION

Hearings Examiner: Yes?

INTERRUPTION

Hearings Examiner: Is this lady your witness?

Mr. J. Jones: Yes.

Hearings Examiner: Okay. Could you give me your full name, maam?

Ms. Barwick: My name is Patricia Barwick.

Hearings Examiner: Spell the last name.

Ms. Barwick: B-A-R-W-I-C-K.

Hearings Examiner: What was that?

Ms. Barwick: B-A-R-W-I-C-K.

Hearings Examiner: And your address?

Ms. Barwick: 1901 North Bentalou Street.

Hearings Examiner: Now, Ms. Barwick, all testimony here is under oath. So, I'm gonn - I've already administered the oath to the other people. OATH ADMINISTERED

Ms. Barwick:

I do.

Hearings Examiner:

Okay. Now, Mr. Jones, according to my records, you first came in Local Office 1, downstairs, the week beginning October the 16th, 1988. That's what we call the beginning of your benefit year. You filed a claim for benefits. You were monetarily qualified. And based on information provided by you to the claims specialist who took your claim and information provided by Mr. Berman, the claims specialist who took the claim made what is known a nonmonetary benefit determination, disqualifying you for ten weeks under Section 6(c) of the Maryland Unemployment Insurance Law. And that determination, which I presume both you and Mr. Berman got copies of, it reads as follows: "The claimant was discharged or suspended as a disciplinary measure by Morris S. Berman on October the 14th, 1988 because of carelessness. The claimant's actions do not show a deliberate and willful disregard of standards of behavior, which his employer had a right to expect, showing a gross indifference to his employer's

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interest. However, the claimant's actions do constitute misconduct in connection with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law." Benefits are denied the week beginning October 9th, 1988 and the nine weeks immediately following, ending December 17th, 1988, for a total of ten weeks. And it's from that determination that Mr. Jones is appealing here today. Now, because this is what is known as a misconduct issue, we'll start off with testimony from Mr. Berman. Mr. Berman, do you have any records with you today - records used in the ordinary course of business...

Mr. Berman:

They've been submitted, most of them, in my original letter down to Unemployment on November 11th, 1988.

Hearings Examiner:

Well, let me see what I got here. Uhm, okay. I have a calendar...

Mr. Berman:

Well, that was for a postponement, probably, where I was somewhere else in another - I just couldn't be here.

Hearings Examiner:

All right. Unfortunately, the file I have is what is known as an appeal file, just for the appeal, and...

Mr. Berman: They don't have any of the...

Hearings Examiner: ...it may be downstairs and they never trans-- They're supposed to transmit that material that comes into us. Many times they don't for whatever reason. But, do you have copies of what you submitted...

Mr. Berman: No. Just the originals here, but I'm sure they can make copies here. Is that possible?

Hearings Examiner: Yeah. Okay.

Mr. Berman: Okay.

Hearings Examiner: All right. Mr. Berman, is it correct that Mr. Jones was discharged?

Mr. Berman: Absolutely.

Hearings Examiner: Okay. Were you the one that discharged him?

Mr. Berman: Absolutely.

Hearings Examiner: Okay. Tell me why.

Mr. Berman: I'll get to the heart of the matter without bothering with the details. I went down to a piece of property known as 1201 West Lexington Street and with me was Mr. Jones, here. (GEORGE JONES) For whatever reason, we had to get into the back basement door. The door was locked. Standing there was the tenant - one of the tenants, I should say - Eddie



Robinson, and he had a son about eleven or twelve years old, I guess. I don't know how old he was. I'm just taking a guess. I said to the son would you do me a favor? Go around and unlock the back door for me. And he very politely said to me, "Are you gonna give me \$3?" I said now, why in the world would I give you \$3 to unlock the back door? He said, "Cause Mr. Jimmy gives me \$3 every time I unlock it for him." And I said to him and when do you do that? He says, "When he comes down on Saturdays and in the evening." I said now, what does he get when he comes down there? He said, "He takes out the material." I said what material does he take out? He says, "I don't follow him, but whatever he wants, he puts into the car." I said in which car was that? He says, "Your stationwagon." I had loaned James the use of my personal car when we had - we were short a vehicle. And he was driving my car. And I said to the boy and I said to Mr. Robinson, is that so? They both said yes. Al looked at me. I looked at Al. And that solved the mystery, one of

our mysteries, of where my material was going...

Hearings Examiner:

Who is Al? Who is Al?

Mr. Berman:

Al - I'm sorry. I should identify, for the record, George Jones is called by his nickname, "Al". And I'm called by my nickname, "Macy". And that's the tag on the vehicle. He also said he did it with the blue van. And, at that point I made a decision that we were gonna sever company. And as soon as practical we did.

Hearings Examiner:

Did you tend to question Mr. Jones (JAMES JONES) and ask him for an explanation?

Mr. Berman:

I - With Mr. Jones (JAMES JONES), I will say this. Every morning when I would come on the job, Mr. Jones refused to say "Good morning," to me. So, we were having absolutely no conversation together.

Hearings Examiner:

I presume there was some kind of friction between you?

Mr. Berman:

I can't answer you. I can only say that Mr. Jones had an awful lot of my personal equipment and Mr. Jones' (GEORGE JONES) personal equipment in the vehicle one day when they were working on Denmore Avenue,

when he decided to take off with the truck and was using my truck at that time - I also have a truck - and he left "all the tools in the truck overnight". "And the next morning, they were stolen." Yet, when I received the truck, there was absolutely no sign of forced entry but all our tools were gone. Thereafter, one another occasion he had my vehicle again with the other tools that I had repurchased and, again - Isn't it amazing! - All the tools are gone and there's no sign of forced entry. Again, I'm choiced in the matter as to what to do and how to do. You don't like to do things that are gonna hurt somebody but, by the same token, I said enough is enough. There were other occasions with Mr. Jones would pull up in my van and inside was material that didn't belong to my job. He would have carpeting. He would have sheetrock. He had a door. He had all sorts of things. And I questioned him and he said, "Oh! I'm doing this for my mother." Well, how many jobs can you do for mom? On a regular basis this stuff is appearing in

my vehicle. And I would say to him, I would like you to load this up over the weekend so in the morning, you'll have this. He refused. He wanted that vehicle perfectly clean for the weekend for his children. I said to him, hey, this is a work truck. It's my truck. You have the use of it. And I allowed him the use of it because he did pick up the other men and he did go back and forth. I paid the gas. I paid the expenses. I didn't say word one about that, but there came a time when he's claiming he wants the van "clean for his children," yet, I'm finding all kinds of construction material. To protect myself, he had a door that he needed money for, I even bought it for \$40. It's still stored over on Chelsea Terrace. And the reason I bought that door was - I didn't need the door - I didn't even want the door, but I knew problems were coming. And I have it stored over there as of today. We went over the other day and it is still sitting there. Mr. Jones did certain repairs for me. And I'd send him off to

them. He said that he did them. The tenants would call me back - Gwynns Falls Parkway, Druid Park Drive, just to name two - didn't do them. I personally went over there and I personally took Al Jones with me - personally saw they were not done. Yet, he was paid for that time.

Hearings Examiner:

When was this?

Mr. Berman:

Since after I let him go. It was one of the reasons I let him go...

Hearings Examiner:

Oh! This is things that happened after his discharge?

Mr. Berman:

I wen-- I checked them prior to that, okay. I got the call just prior to his discharge and I went over and checked them myself to make sure that they were not done. And, in fact, they were not done. 3910 Gwynns Falls Parkway, he was supposed to put some red brick tiles, cement them back into the floor on the outside. He didn't do it.

Hearings Examiner:

But these weren't reasons you fired him because you didn't find out until afterwards, correct?

Mr. Berman:

Well, the complaint was made prior...

Hearings Examiner:

Yeah. Okay.

Mr. Berman:

...to his discharge. It was just

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mounting one on top of the other. Some of the work that he did do on Manchester Avenue, 3735, wasn't done to workmenlike quality for which should be done. I mean, if you have to measure something and put it in, it would be an inch short. It would be put in. And I couldn't talk to him. I couldn't say anything. I said something to him; he was on his lunchbreak. He didn't talk to me on his lunchbreak. And I would sit there - I work with the men, okay. From here, I'm going to the job. As many days as I can, I'm on the street. One of the reasons I'm on the street is because of this kind of a problem. Then there are other things. We had concrete down on Roland Avenue. And I said take that up to Druid Park Drive cause I personally put it in a basement. I personally went to Roland Avenue; it was gone. And, there was nobody living in the property. And I went to Druid Park Drive; it never got there. It's not an expensive item, an eighty pound bag of concrete, but there's a principle behind it. Where did my eighty pounds of

concrete go? To this day, I don't know. The day that he returned the ladders back to me, he did not return my van. I had to repossess it. It cost me \$150 to repossess my van. And I noticed the tires were destroyed. I didn't say a word to him. My ladder, a \$200 ladder, is destroyed. It's of no value. You've got two twenty foot sections if you want twenty foot sections. They're worthless. To rebuy that ladder today is over \$200, okay. From another employee, not from Jones - Mr. Jones, James Jones - "A bus hit it when it was on the truck." Well, if a bus hit it while it was on the truck, why don't you find out who destroyed my ladder and let me know so I can collect, give him back the bad ladder and get my new ladder back. There was nothing wrong with my ladder. Not a single word to me. Put the ladders down on the side. I went and looked inside the van the day he brought it back. It was devoid of anything that we have in the van and piled in there neatly were gray milk crates and caulking and spackling. I said to him, where did we

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get that? He says, "That's for the job that I'm working on." Now, this is the day he's bringing the van back to bring my ladders back. That's his last day of employment. He's got material on board for another man's job. And he says so right to my face and I see it right then and there. "I returned everything to you." Nothing came back to me. Well, I submitted on October 11th from Carey Paint and Supply, he bought a brand new knife. On October 10th, he brought for Hollins Street a (inaudible) and a handle for \$16.58 and a (inaudible) for \$29.75. Did you see it back? I didn't see it back. Didn't see the concrete bag. If he went on a job, never (inaudible) the paint back again. There's only so much of this that anybody can stand for. And I've reached my limit. And Jones has an explosive temper. In front of me that Friday, he took a brand new cup of 7-Eleven coffee and smashed it into the ground. I don't want to get involved with this guy like that. He's sitting in here today nicely dressed and smiling. That doesn't mean



anything. I don't want to argue physically with anybody. I'm not a violent, physical person. I'll do what I gotta do to the legal end to (inaudible) degree. I don't give up. But I won't involve anybody physically. That's not my style. In addition to that, on November 11th, another employee, and this is under oath, Lawrence Pollack, Lonnie, drove by at 8:30 a.m. on the bus, going to work for me - saw James in his work clothes with my van with a load of silver pipe...

Hearings Examiner:

What date was that again?

Mr. Berman:

November 11th. This was after he left my employ and when he's "unemployed."

Hearings Examiner:

Oh!

Mr. Berman:

Which I do not believe for one tenth of one second that he's not been working everyday. Now, I have proof...

Hearings Examiner:

I, I - Mr. Berman, I don't want to go into anything after the date of discharge.

Mr. Berman:

Okay. Anything after that. Well, I think that has a bearing on his unemployment claim. If we're here and we're under oath and I have the right of

cross examination, I'm gonna pursue this to the end degree. As you said when you started, "you can get a more severe penalty than when you started." And I intend to pursue this to the letter of the law.

Hearings Examiner:

Yeah. But it has to be based on incidents that occurred prior to discharge.

Mr. Berman:

Let's say that it's true, but the man is still on unemployment today. And if that proves to be fraudulent, then I would like to see him go to jail for that. And I have no qualms. None whatsoever. So I think it does have a bearing. And I have submitted this. And it is under oath. Okay. And whether you take it into account or not as whatever you want to do, I don't know what else I can do, but, I can only tell you that all the tools that Mr. Jones bought, nothing came back. All the materials he used, nothing came back. He was using my van to do other people's work.

Hearings Examiner:

When he bought merchandise, did he pay cash?

Mr. Berman:

Oh, no! No. No. He signs for...

Hearings Examiner: He charged them on...

Mr. Berman: ...Charged them on my account.

Hearings Examiner: ...your account, okay?

Mr. Berman: Right. And I sent a letter around the day he was discharged to all my suppliers that he was no longer in my employ and nobody will charge anything, of course, to my account on him.

Hearings Examiner: Okay.

Mr. Berman: Which I do as a normal course for anybody. Not just for James. I did that - Whoever would leave me, I would do that if they (inaudible).

Hearings Examiner: Makes business sense.

Mr. Berman: That's all.

Hearings Examiner: Okay.

Mr. Berman: And, uh, basically, that's why I let James go. And those are my reasons.

Hearings Examiner: Okay. Do you have anything you want to submit into evidence?

Mr. Berman: Well, I would have somebody make copies. If you don't have these, I will...

Hearings Examiner: Well, just - I will make copies, but I just want to identify for the record...

Mr. Berman: ...This was sent to his attorney - I will submit and have into the record the

entire November 11th, 1988 letter. I stand corrected. It went to James' attorney. I don't know if I sent a copy into...

Ms. Barwick:

Mr. Hearings Officer, we'd like to see what he's presenting (inaudible).

Mr. Berman:

His attorney has it. Are you his attorney?

Ms. Barwick:

I'm his representative today.

Mr. Berman:

Are you own attorney?

Mr. J. Jones:

We want to see what's here now.

Ms. Barwick:

I'm not an attorney but I'm his representative here today.

Mr. J. Jones:

We want to see what's here now.

Mr. Berman:

What type of representative are yo?

Mr. J. Jones:

I'm a union representative and a personal friend of Mr. Jones...

Mr. Berman:

A union...

Ms. Barwick:

...and I'm here to represent him today.

Hearings Examiner:

Uhm,...

Mr. Berman:

I don't think you can.

Ms. Barwick:

I can. (Inaudible)...

Hearings Examiner:

Mr. Berman, Mr. Jones can have anybody represent him whether they're an attorney or not...

Mr. Berman:

Okay. That's cool.

Hearings Examiner:

...We don't come under the...

Mr. Berman: Oh! I do have one other thing, another (inaudible). I'm sorry. I'm glad you said that.

Hearings Examiner: But you identified yourself as a witness, not as a representa--

Ms. Barwick: Well, I'm his representative. I'm not his witness. I'm his representative. That's why I'm here.

Hearings Examiner: All right.

Mr. Berman: Well,...

Ms. Barwick: (Inaudible).

Mr. Berman: This is what was returned to me as keys to my various properties that Mr. Jones, for whatever reason, had. And there must be \$35 worth of keys here, which are absolutely worthless. He took all the tags off. I have no way to identify any of these keys, none whatsoever. I have no idea where any of these keys belong. And all I can do is go out and repurchase them.

Hearings Examiner: All right. Let the record show that Mr. Berman is offering into evidence - it's gonna be identified as one document, consisting of one, two, three, four,...

Ms. Barwick: We'd like to say that anything beyond October 14, we'll object to.

Hearings Examiner: ...five, six, seven, eight - eight pages. And one is a letter to Robert MacMeekin, Esquire. Another is a letter to this agency. Another is a charge to Carey Paint and Supply...

Mr. Berman: Excuse me. There is a letter to there where I sent it in, then. Then it is in the record. You just don't have it. If you'll look back there - May I - Did I sent it to you? Is that addressed to...

Hearings Examiner: This is your (inaudible)...

Mr. Berman: Okay. Fine. Then I did submit it and it is somewhere in your file.

Hearings Examiner: Okay. Not my file. The agency file.

Mr. Berman: The agency file.

Hearings Examiner: But I have to have it in my file before...

Mr. Berman: Okay. Well, we can make another copy.

Hearings Examiner: ...to be evidence. Yeah. Okay. Uhm, an affidavit of Lawrence Pollack...

Ms. Barwick: Who is Lawrence Pollack?

Hearings Examiner: I have no idea.

Ms. Barwick: Why is he not here today?

Hearings Examiner: Uh, a letter to Mr. Jones from Mr. Berman dated October - looks like 14th, I think or 19th - I can't make it out.

Mr. Berman: 14th.

Hearings Examiner: 14th.

Mr. J. Jones: It's dated to me, sir?

Hearings Examiner: Yes.

Mr. J. James: Okay.

Ms. Barwick: What are the other dates on the other letters? Was that after October 14th?

Hearings Examiner: Uhm, well, one is just a letter dated November 11th, addressed to this agency. I'll let that go through. Another - something headed JMS Financing...

Mr. Berman: That's correct. Concerning the van.

Hearings Examiner: Oh! The van?

Mr. Berman: (AFFIRMATIVE)

Hearings Examiner: Okay. Uhm,...

Mr. Berman: He has copies of all these.

Mr. Jones: Whoa! Whoa!

Ms. Barwick: That has nothing to do - That's irrelevant. It has nothing to do with this hearing.

Hearings Examiner: Another is a retail installment contract. I'm gonna call a recess while Mr. Jones is examining the evidence.

RECESS

Hearings Examiner: We're now back on record. Mr. Berman, this is the total evidence you're submitting?

Mr. Berman:

One other. Since I was here. It has some bearing on what happened here. While in my employ, Mr. Jones managed to burn the clutch out on my truck on two occasions and the transmission on another occasion which cost me a total of close to \$1500 in repairs. While he was driving the blue van, it cost me something in the neighborhood of \$350, \$400 in additional repairs after I put the van - in perfect condition - I just had the van out of the shop. It came out yesterday. It's gonna cost between \$700 and \$750 to do the repairs - When I received the van back from him that Friday. And I spent about \$80 just on replacing mirrors that he kept breaking off the van for whatever the reason. So...

Hearings Examiner:

But you never disciplined him for that.

Mr. Berman:

Well, we did have some conversation about this. And I did say things to him and it went in one ear and out the other ear. And finally, it got to the point where he wouldn't even say good morning to me anymore. And I figured I'm paying this money. I'm laying it all out. That's



enough. I don't want him anymore. I can't have him around. He's a bad influence on my men. When you sit around there and I say good morning and three guys answer good morning and he grunts and goes on his way, there was no way I - I just had to make decisions and when the time was right, I gave him his notice and I got rid of him. And I'm happier for it.

Hearings Examiner:

Okay. Uhm, Ms. Barwick...

Ms. Barwick:

Yes. On cross examination, I'd like to ask Mr. Berman some questions. Mr. Berman, how did Mr. Jones happen to come to your employ?

Mr. Berman:

Al Jones, here, brought him in to see me.

Ms. Barwick:

And?

Mr. Berman:

I was looking for somebody. Al said he could do the job. And it turns out he was a cement finisher. And he was not an all around mechanic. In fact, the first job we did was 2103 Westwood. And we were doing a ceiling. And the first day he was there, he was painting it wrong. And I said something to him and he said, "Okay. I'll be glad to change and do it."

Hearings Examiner: Mr. Berman, I don't think you're being responsive to her question.

Mr. Berman: She asked...

Hearings Examiner: She just asked you how he happened to come...

Ms. Barwick: Yes.

Mr. Berman: That's the first day I met him.

Hearings Examiner: Okay.

Ms. Barwick: Okay. How long did Mr. Jones work for you?

Mr. Berman: Fifty weeks. Forty-nine weeks.

Ms. Barwick: Okay. All right. During those fifty weeks did you have any problems with any of Mr. Jones' work?

Mr. Berman: Yes.

Ms. Barwick: For example?

Mr. Berman: I gave you some of the examples.

Ms. Barwick: I mean is there anything documented? Did you take any disciplinary action of things that Mr. Jones did not do?

Mr. Berman: Well, I would talk with him and say listen, you know, this is what you gotta do and this is how you gotta do it. Al would smooth it over most of the time.

Ms. Barwick: Did you make any notes, either mental notes...

SIDE TWO

Hearings Examiner:

Continue, Ms. Barwick.

Ms. Barwick:

Did you document anything during the course of the fifty weeks that Mr. Jones worked for you that you were having problems in any sort of way?

Mr. Berman:

No.

Ms. Barwick:

All the things that - the projects that were assigned to Mr. Jones, were they completed?

Mr. Berman:

Finally, most were.

Ms. Barwick:

I would think, sir, you know, after fifty weeks, I would think he had to be doing something right to stay there that long.

Mr. Berman:

Well, if you say that, the last job he did - one of the last jobs was on Druid Park Drive. I sent him over there to fix a roof. He came back and said it was done. It leaked. We went up there and had to redo it. I went up there with Al just a couple weeks ago and redid it and now it stopped leaking. So, he didn't do that and the cement wasn't there.

Ms. Barwick:

Okay. I'd like to show you a letter dated September the 30th, 1988. Have you seen this before?

Mr. Berman:

I probably wrote it.

Ms. Barwick:

We would also like to submit a copy...

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Mr. Berman: Oh! Absolutely.

Ms. Barwick: ...(inaudible). The letter that you're looking at tells us that Mr. Jones was given this letter on September the 30th, saying in two weeks he would no longer be employed by your company.

Mr. Berman: Absolutely.

Ms. Barwick: And the reason this letter states and the reason you give here today are absolutely two totally different reasons. Uh,...

Mr. Berman: One hundred percent diabolically (inaudible).

Ms. Barwick: It reads, and I would like to read it into the record...

Mr. Berman: You don't have to read it in the record. It speaks for itself.

Ms. Barwick: I would like to read it into the record. And, I have that right, sir.

Hearings Examiner: Yes. Go ahead.

Ms. Barwick: I'm crossing you. "It appears - Dear Mr. James - It states James Jones, September 30, 1988. "Dear James: It appears to me that for whatever reason you and I have not been able to say good morning for weeks now, and I have decided that it is time for you and I to part company. I hereby advise you have two more weeks

employment with me. And, at that time, I would request a return of whatever tools I have loaned you, and the truck and its possessions. In addition, I have advanced you \$200 and it has been paid back at the rate of \$25 per week. Three pays are left for you and there is a balance due of \$100. This is causing me to take the sum of \$50 from this pay, and then the balance next week, so that you receive whatever you are due in your final check. I trust you understand my position. Yours, Morris Berman." This is the reason you gave Mr. Jones for terminating him, Mr. Jones.

Mr. Berman:

That's correct.

Ms. Barwick:

All the other things that you mentioned earlier were after the fact.

Mr. Berman:

No, maam!

Ms. Barwick:

Yes, sir.

Mr. Berman:

If you listened to my testimony, maam, I told you...

Ms. Barwick:

I did.

Mr. Berman:

...Mr. Jones had a very violent temper. He was in my office. And, in fact, Mr. Jones (GEORGE) was in there when this was done to insure my safety that we didn't

have a physical battle. That's why that letter was written, exactly. And he knows it...

Ms. Barwick:

So, (inaudible)...

Mr. Berman:

...and he's here today.

Hearings Examiner:

Let me get this into evidence. This letter...

Mr. Berman:

You can put in anything you want.

Hearings Examiner:

... dated September 30th...

Ms. Barwick:

September 30th.

Hearings Examiner:

...1988 to Mr. Jones from Morris Berman will be identified as Claimant's Exhibit 1.

Ms. Barwick:

Also, we'd like to present this letter. This is dated October 14th. It's a letter that you gave Mr. Jones on the last day of his employment, is that correct?

Mr. Berman:

That's correct.

Ms. Barwick:

Okay. This letter - James Jones, October 14, 1988, Re: Failure to return truck, Acceptance of service, and Reduction of claim by pay check..."Dear Mr. Jones: You have failed to return many tools and my truck to me. So I am offsetting it by your pay check this week. You'll be given an accounting as soon as

possible." In fact, the truck we're not gonna get into now because that's a case we're gonna be dealing with in court.

But...

Mr. Berman: I have repossessed the truck, maam.

So,...

Ms. Barwick: You have no re-- I'm sorry....

Mr. Berman: We have repossessed the truck.

Ms. Barwick: ...You have no repossessed the truck. We gave you the truck back at the direction of his attorney, is what happened...

Mr. Berman: Well, you can say it anyway you want.

Ms. Barwick: ...because we have the documentation on the truck...

Mr. Berman: I repossessed the truck.

Ms. Barwick: Sir, we're not gonna get into the truck thing today because that doesn't have anything to do with this case. But, what we'd like to have the hearings officer know is that on October the 14th when you did try and finally terminated Mr. Jones, is it not true that you took his whole pay check?

Mr. Berman: It's still sitting in the safe. I haven't touched it.

Ms. Barwick: But you took the man's pay check?

Mr. Berman: Did the man return my truck? Did the man

return my tools? The answer...

Ms. Barwick: Well, that...

Mr. Berman: ...to that is yes or no. Well then, I hold it.

Ms. Barwick: That's, as I say...

Mr. Berman: Absolutely I held it.

Ms. Barwick: ...another matter. But we're here today for the reason that you gave Mr. Jones for terminating him. And the reason we're here is that he was penalized for ten weeks that we don't feel is fair and...

Mr. Berman: That's not enough.

Hearings Examiner: All right....

Ms. Barwick: Well sir, I'm crossing you, please.

Mr. Berman: I'm answering you.

Ms. Barwick: I did not ask you for an answer just now.

Hearings Examiner: Let me get this into evidence. The letter, handwritten letter, on Morris Berman letterhead, dated October the 14th, 1988 will be identified for the record as Claimant's Exhibit 2.

Continue, Ms. Barwick.

Ms. Barwick: Do you have anything documented at all to show us here today that James Jones during the fifty months he worked for you did not do the job that you wanted him to



do? Is there anything that you have today that you can give to the hearings officer?

Mr. Berman: First of all, it's fifty weeks...

Ms. Barwick: Fifty weeks, whatever. Do you have anything that you can present here today?

Mr. Berman: I didn't think it was necessary.

Ms. Barwick: Well, it's always necessary when you terminate an employee that you can show proof that you have reason or grounds for terminating that employee.

Mr. Berman: My testimony speaks for itself. I found him to be totally unsatisfactory after a period of time.

Ms. Barwick: Well, you did not say that in this letter. You have no (inaudible) documentation...

Mr. Berman: And I'm explaining the letter. And the man can take that letter and get a good job with it. So I was trying, in my own way, to help the man...

Ms. Barwick: That's not how it works.

Mr. Berman: Well, that's the way normal people do.

Ms. Barwick: That's not the way (inaudible) works.

Mr. Berman: Well, I'm not interested in that. I was trying to help the man get a good job and leave my employ. And that's the end of

it. He chose to do what he did...

Ms. Barwick: Mr. Berman, please answer...

Mr. Berman: ...and I chose to do what I did.

Ms. Barwick: ...my question. Do you have anything here today that you can present to show us that Mr. Jones did not do the job you wanted him to do for fifty months (inaudible)?

Mr. Berman: Would you like to go to Manchester Avenue and see the sloppy work he did?

Ms. Barwick: Mr., uh,...

Mr. Berman: I don't put anything in writing, maam. I have five men. It's not necessary for me to put it in writing.

Ms. Barwick: I have nothing further. You've answered my question.

Mr. Berman: That's good.

Ms. Barwick: You've answered my question. (Inaudible). Thank you.

Hearings Examiner: Okay. Uhm, all right. I want to bring to everybody's attention, we're scheduled here every half hour on the half hour. Under circumstances we can extend the hearing. But, according to my watch, it's about 9:48. If the hearing - If we're not finished by quarter after ten, I'll have to continue the hearing to a

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further date. So, it's up to you folks.

Ms. Barwick: We should finish.

Hearings Examiner: Okay. Mr. Jones...

Mr. Berman: Which Mr. Jones?

Hearings Examiner: Oh, I'm sorry. I want to go to this Jones first. Mr. George Jones. Since he's your witness, you have the right to ask him any questions, direct testimony.

Mr. Berman: Certainly. I'm gonna use it as "A1."

Hearings Examiner: All right.

Mr. Berman: Were you with me the day we went down to Lexington Street?

Mr. G. Jones: Yeah.

Mr. Berman: Was the statement that I made concerning the child's statements to us about paying Mr. Jones money to get in the back door, him taking out my material, true and correct?

Mr. G. Jones: It's true.

Mr. Berman: Rather than go into a lot of rehash, we'll save a little time. Is it a fact that you gave a lot of tools and equipment to Mr. Jones that to this date have never been returned?

Mr. G. Jones: Yes.

Mr. Berman: Specifically, could you name just a few of them? Did I have to not - well, to

save time - buy you a new tool pouch?

Mr. G. Jones: Yeah.

Mr. Berman: How about your hammers?

Mr. G. Jones: Yeah.

Mr. Berman: The, uh - Well, whatever you can name. I'll let you name it.

Mr. G. Jones: A sheetrock hammer valued at \$32.50. A leather tool pouch. How about - You want me to put in the tools that...

Mr. Berman: Everything.

Mr. G. Jones: I...

Mr. Berman: If it's gone, it's gone. If I paid to replace it, that's my expense. You just name it.

Mr. G. Jones: The Milwaukee (inaudible), sanders...

Mr. Berman: I have a list, I think. Would you want a photostat of this? And we would submit this as another...

Hearings Examiner: What is it? What is this?

Mr. Berman: This was in the van at the time that it "disappeared," except a refrigerator mover. Except the refrigerator mover.

Hearings Examiner: This paper wasn't...

Mr. Berman: No, no.

Hearings Examiner: ...You mean the items?

Mr. Berman: The items. Yes.

Hearings Examiner: The items?

Mr. Berman: The items. But we received back \$250 for the loss of all that equipment...

Hearings Examiner: (Inaudible)...

Mr. Berman: ...that he allegedly, "had stolen."

Ms. Barwick: When was this? When was this? There's no date. When did all this, supposedly take place?

Mr. Berman: Oh! This happened...

Mr. G. Jones: We got the police report on that.

Mr. Berman: That's correct. He made it. Loss date, March 18, 1988.

Ms. Barwick: Go on. You were (inaudible). Okay. I got - Go on.

Mr. Berman: This list would speak for itself. We would just photostat it and allow it to be entered into the record. Was the sheetrock hammer your person tool?

Mr. G. Jones: Yeah.

Mr. Berman: The tool pouch?

Hearings Examiner: Excuse me. Let me interrupt just a second.

Mr. Berman: Certainly.

Hearings Examiner: The list of items from the van will be identified as Employer's Exhibit 2. Continue.

Mr. Berman: When I would go on the job and Mr. Jones was there during the last few weeks,

would he talk to me?

Mr. G. Jones:

No.

Mr. Berman:

Would he talk to anybody?

Mr. G. Jones:

No.

Mr. Berman:

Was he causing a strain amongst the men?

Mr. G. Jones:

Yeah, in a way because - I tried to talk to him to try to show him that it wasn't no need for the way that he would act, you know, towards Mr. Berman. If there was a reason for that, I could see it, but I never seen Mr. Berman actually give the man a reason to be treated the way that he was. And, personally speaking, if I had a guy that worked for me that you come on my job and I'm around and you can't open your mouth to me, you can't even say good morning, I don't need you. And then when I ask you something, you don't know how to talk to me. You're nasty. Jimmy just has a nasty disposition (inaudible)...

Hearings Examiner:

All right.

Mr. Berman:

Uh,...

Hearings Examiner:

I gotta move it along. Go ahead.

Mr. Berman:

Did you cover up any of the work that he botched so when I got there I'd think it was his work and not yours?

Mr. G. Jones: Yeah. Well, yeah. That's true. It was never - it was never an actual problem until Jimmy went on his own. And then...

Hearings Examiner: What do you mean by going on his own?

Mr. G. Jones: Well, times that we had to separate; he'd go on a job and I'd go on a job.

Mr. Berman: Different jobs. That's what...

Mr. G. Jones: Right. I would do my thing and Jimmy would do his. And then, this is when we started finding out the problems, coming back. That the people would call back and say this wasn't done right. It's still leaking or (inaudible).

Hearings Examiner: Any other questions?

Mr. Berman: That's it. I'm not gonna drag it out. That's enough.

Hearings Examiner: Ms. Barwick, cross examination of Mr. Jones?

Ms. Barwick: Yes. I heard you say (inaudible), Mr. Jones - You're George Jones, is that correct?

Mr. G. Jones: Right.

Ms. Barwick: That there were some tools. You (inaudible) list of tools. And the date that was given by Mr. Berman was March 18th, 1988?

Mr. G. Jones: Yes.

Ms. Barwick: Okay. Mr. Jones was still employed until October the 14th, 1988. Is that not correct?

Mr. G. Jones: True.

Ms. Barwick: Is it not also a fact that those tools that walked or whatever, missplaced, were recovered by insurance?

Mr. G. Jones: No. No.

Ms. Barwick: He just said he was given \$250.

Mr. G. Jones: Yeah.

Ms. Barwick: Who gave you \$250?

Mr. G. Jones: Listen. Listen. You have \$1200 - over \$1200, \$1300 worth of tools and somebody's gonna come and give you - and hand you a check for \$250...

Ms. Barwick: That is not our concern. I'm saying did he file a claim with his insurance company for the tools (inaudible) missing?

Mr. G. Jones: Yeah. Yeah.

Ms. Barwick: And did the insurance company reimburse him for what they thought the tools were worth?

Mr. G. Jones: That, I can't answer...

Ms. Barwick: Well, he was reimbursed by the insurance company. Is that a fact?

Mr. G. Jones: I can't answer that.



Hearings Examiner:

He doesn't know.

Mr. G. Jones:

I don't know.

Ms. Barwick:

All right. How did you happen to take Mr. Jones who was a good friend of yours to Mr. Berman? Now, today we here all these negative...

Mr. G. Jones:

Well, because number one, Jimmy ran into my brother one day and found out where I lived at after we had been separated for so many years. Then we got together. He came up one night and started talking. He was talking about work and whatnot. So, at that particular time we didn't have an opening, but as a few months went by, we had a problem with this guy (inaudible) and we had to get rid of him. So, when I called Jimmy, he couldn't come to work with us right away cause he was in the process of finishing up a job that he was doing on his own. And right after he finished that, then he ca-- he called me and said he was ready and he came to work. And everything was fine. I mean the first six or seven months was fine. No problems...

Hearings Examiner:

Excuse me, Mr. Jones. I think you're getting beyond her question.

Mr. Berman: Okay.

Hearings Examiner: See, you only answer exactly what she asks you.

Ms. Barwick: Yeah. I wanted to know how he came about working...

Hearings Examiner: And, you know, don't expand on it.

Ms. Barwick: Okay. So, that's fine. And one other final question to you. Did Mr. Jones - James Jones - pick you up everyday and take you to work?

Mr. G. Jones: Yes.

Ms. Barwick: When Mr. Jones came on board did he not have his own van?

Mr. G. Jones: Yeah. He had a van. And he...

Ms. Barwick: And he used the van for Mr. Berman's company until it fell apart or was no longer operable?

Mr. G. Jones: Yeah.

Ms. Barwick: And then, how did he happen to come about the van that Mr. Berman claims he had to repossess?

Mr. G. Jones: Well, number one, Jimmy had burnt his truck up from the fact of not having oil and whatnot in it. He burnt the engine up.

Ms. Barwick: He was using his truck for this company, is that right?

Mr. G. Jones: No. He wasn't using his truck for the company. The only thing that he was doing was hauling his tools, along with my tools.

Ms. Barwick: And he was picking you up everyday to take you to work?

Mr. G. Jones: Yeah. Right.

Ms. Barwick: Okay. I have nothing further for this gentleman.

Hearings Examiner: Okay. All right. Mr. James Jones - All right. I'll turn him over to you, Ms. Barwick.

Ms. Barwick: Mr. Jones, for the record, tell the hearings officer your name, address, how long you've been employed...

Hearings Examiner: I don't need his name and address. That's just wasting time.

Ms. Barwick: Okay. How long have you been - How long were you Mr. Berman's employee?

Mr. J. Jones: I have to agree with maybe fifty weeks - forty-nine, fifty weeks, maybe. Almost an anniversary year for a working cycle.

Ms. Barwick: Okay. In your own words, you want to tell the hearings officer to the best of your knowledge, what happened up until September 30th?

Mr. J. Jones: Well, Al Jones indicated how I got

started. I stepped to him to get the job. When I went to see Mr. Berman, Mr. Berman didn't question it because Mr. Berman just wanted the Westwood Avenue facility painted. I told him what my basic occupational trade was. I told him that I was a cement finisher. For some reason - I'll assume Al spoke in good terms for me - he took me completely aboard. But, in the process of working in the house on Westwood Avenue, he told me that he wanted his house painted this way and the other, which was okay to me because like I told, I didn't know it. He gave me instructions and left the room...

Hearings Examiner: Let me interrupt you one moment. Before you went with Mr. Berman did you have experience in painting and repairs and...

Mr. J. Jones: Minor. Minor.

Hearings Examiner: Minor?

Mr. J. Jones: Minor.

Hearings Examiner: Okay. But your main, uh,...

Mr. J. Jones: Was concrete work.

Hearings Examiner: Concrete work?

Mr. J. Jones: Yes.

Hearings Examiner: Okay. Go ahead.

Mr. J. Jones:

So he left the room and he asked the other guys what did he need with a cement finisher. That was like the first week of my employ there. Uh, after several months on the job, they got rid of the driver that they had that was driving Mr. Berman's personal vehicle. And from there, I saw that I was not only being used for my labor services, but I was also pick-up/delivery. I was also the chauffeur, the company chauffeur. And I questioned it. And I questioned this always because I was assigned pretty much the way it looked. I was pretty much assigned to Al Jones. In other words, Mr. Berman would call Al Jones during the evenings after work and give him his assignments. So it wasn't a matter of whether I confronted Mr. Berman in a "good morning/good evening," whatever, I wouldn't have to see Mr. Berman. All I would have to do is go to Al and take Al on any work site assigned.

Hearings Examiner:

Were you reimbursed for the use of your truck?

Mr. J. Jones:

No, sir. I was only given a...

Hearings Examiner:

Gas or...

Mr. J. Jones: ...a gas supplement.

Hearings Examiner: Gas supplement?

Mr. J. Jones: Yeah. And the gas supplement averaged anywhere from \$5 to \$15 a week, unless I would haul something extraordinarily heavy. I only had a half-ton vehicle. And I was reluctant in the very beginning, yes sir, to not to want to take anybody's tools, anybody's materials because I had the truck insured and I didn't want to take that responsibility. I didn't want it on the strength of the fact that my neighborhood did have a high risk of auto burglary. But beside the point, and reluctantly, I did it. When the truck was broken - Well, the truck was broken into in front of my house on several occasions. The first time I notified Mr. Berman, Mr. Berman said call the police. I called the police. We gave out the report. I submitted everything. I gave him the report, the items and everything. And I apologized to Al that it happened, but I told him, I said look, that's my neighborhood. I'm sorry. Okay. It's like that. The second time, it happened

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like maybe a couple of - maybe about a month or so later - Mr. Berman advised me not to call the police. He said just, you know, come on into work. Don't bother about calling the police. Well, during that process, Al had given me some tools, all right. Al did give me some of his own tools. He said he had an extra...

Hearings Examiner:

You say "gave."

Mr. J. Jones:

Yes, sir. He had a extra...

Hearings Examiner:

You don't mean...

Mr. J. Jones:

...this. He had a extra that.

Hearings Examiner:

...gave it to you like a gift?

Mr. J. Jones:

Yeah. Like, "Here, Jim."

Hearings Examiner:

Or gave it to you to use in your work?

Mr. J. Jones:

"You need this to work with. I don't need this anymore because I have another set."

Hearings Examiner:

All right. Okay.

Mr. J. Jones:

"Here's yours." But, in reference to certain items I have to question because I'm pretty certain that a lot of these tools did belong to Mr. Berman that were put on the vehicle. All right. And I had to sort of have it organized so that I could what it was that was mine and was

not Mr. Berman's because I was doing work on the side before I came to Mr. Berman. I was organized with a few associates before I came to Mr. Berman. And I wasn't gonna dispose of my association with these people simply because I'm employed for Mr. Berman. And my weekends, after eight hours a day, belonged to me. I have a right to them. Mr. Berman has no right to insist that I work nine, ten hours a day, if he insist on not paying me but for eight. Mr. Berman has told me to pick up Al or to pick up Lonnie or to pick up this employee or to pick up that employee, but he's never set (inaudible) because that's where the decision fell in for me to get compensated for the first out, last in process that I was under. And I felt that that was unfair. It's my vehicle. I'm insuring it. I'm doing the maintenance on my vehicle. Not one time, not one time did Mr. Berman pay for it. He might have fronted me the money until I got paid but he didn't, per say, pay for my vehicle. I'm talking about the '74 van. All right. Now, things went a



little rough because I approached Mr. Berman about this. When I - We sat down and talked in the office. He told me to come on up to the office. This is where I think I mad the mistake. I actually sat down, but I thought it was the right thing to do. I sat down with Mr. Berman, he and I together. And he tells me that he had been setting aside X amount of dollars a week for us in reference to the vehicle. So I said well, Mr. Berman, that's fine, but I feel, being that I'm the first guy out - I've got to get Al every morning. I've got to see to it that Al gets back every evening. That means I'm the first man out in the morning. I'm the last man back in the evening. I don't have no problem with that, but I think I should be compensated to some degree. "Well, James, I'm gonna try to work it out." All right. Mr. Berman, I'm finished with it. But, I would take what I would say back to Al because we're working together almost everyday. And I kind of let him know how I feel about it. I'm saying, look, I feel that Mr. Berman is not being fair

about the way I'm picking guys up and taking them home, along with carrying the materials and the tools. Then he wanted to leave their tools on my vehicle at night. It wasn't that I was such a bad guy. I'm telling them I'm in a high risk area for that kind of problem. So, you know, take them off. I don't want to be responsible. If you got something to do the next day - it's crazy knowing what the risk is - take them home. I got to take you home anyhow. Take them off the truck. If they break in the truck, don't let anything be in there but something that belongs to somebody that doesn't have to suffer the loss. Well, after Mr. Berman said that he didn't see anyway that we could do that, I asked him about a raise because around the camp, sort of say, and they'd sit around on Friday and just shoot the fat, we'd find out that one of the difficult things to do was to approach Mr. Berman about a raise. Well, I had been informed that Mr. Berman would eventually give you a raise on a ninety day sort of cycle. So, after being there for about four and a half months I

approached him. And he said, "Well, we'll see, James." That was fine. After six months, I questioned it. I stepped back to him. I asked him. I straight up asked Mr. Berman for a raise. He said no. He wasn't gonna give anybody a raise right then and there but he went out and hired a guy. Every time you asked him for a raise, he hired another guy. So, I'm saying I still got the pickup. I still got to deliver and I'm not getting compensated. When I carry an extra load, the gas bill comes to \$18. He goes to complaining, "I'm not gonna pay it." He pays it, but he says he's not gonna pay it. So, I say well, okay. You know, enough is enough. I don't have anymore to say to him, you understand. You doesn't have anything to say to me. When he come on the job site, I'm never the very first person that he sees. So I don't feel like good morning would be appropriate. If I don't see him first and he doesn't step to me, if I'm busy, why should I have the need to say, "Hello, Mr. Berman"? When he comes to me, it's not hello. He's got a

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question. I've got to give him an answer.

Ms. Barwick:

All right. Let me make some clarity here on that. When you say you're not the first person - I mean that he don't see you around (inaudible)? You're busy working (inaudible)?

Mr. J. Jones:

Yeah. I would be some - Almost every time he come on a site, unless he comes on a roof. Now, I might spot him coming up the roof but I'm not gonna stop what I'm doing and say, "Hey, Mr. Berman". I'm gonna (inaudible) Mr. Berman, "Mr. Berman, get the tools."

Ms. Barwick:

Okay. So, you - So, what you're saying is that he seems to be upset that you don't stop what you're doing to say, "Hi, Mr. Berman"?

Mr. J. Jones:

Well, appar-- Well, from the letter of discharge, because like I say, I'm totally baffled. Outside of the fact that I don't say "hello," I never even thought that was an issue.

Ms. Barwick:

Okay. Well, let me ask you this, Mr. Jones. As far as your work was concerned, you were there for fifty weeks. Do you think you did an adequate

job? The job that Mr. Berman hired you to do?

Mr. J. Jones:

I think so. And I'm gonna have to use the same gauge that Mr. Berman uses. I'm gonna have to use Al. And the reason why I say use Al - I don't mean this in an abusive way because, you know, I'm not interested in disassociating myself. I feel just as associated to him now as I was in the very beginning of this whole matter. So I don't want to lean out on him, but I do want to say this. If it was wrong while I was doing, at the time I was doing it, knowing Al the way he knows his work, he would have corrected me right then and there. He knows that he can step to me and say, "Jimmy, that ain't right." He can tell me, "Hey look, we're not gonna do it that way," and it would be changed right then and there.

Ms. Barwick:

And that did happen? He had done that?

Mr. J. Jones:

If it's ever happened, Al would do it to me. That's right.

Ms. Barwick:

Okay. And then just prior to your termination on September 30th - Tell us what happened on September the 30th.

Mr. J. Jones:

Well, Al pulled me up because I normally

take Al and Lonnie back to the office to get paid or I normally take everybody that's on the job back to the office to get paid. Al came to the truck and he had told me that Mr. Berman was gonna take everybody else back to the office and he was gonna ride with me.

Ms. Barwick:

"Al" - We're speaking of George Jones now?

Mr. J. Jones:

Yeah. We're speaking of George. And he said that "Mr. Berman said he doesn't like your attitude." And he said, "Look, he said if you don't change your attitude, he's gonna get rid of you in a couple of weeks." Well, I thought that wasn't for Al to tell me, but nonetheless, I listened to him because, like I said, we were associates well before this type - you know, this (inaudible) employ. So I said okay. And right then and there - you know, Al is like a - he's a grandfather type. He wants to keep all the grandchildren to playing fair, regardless of the rough ones or the meek ones. And that's what he was going through. He was trying to find a way to figure out what it was that

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between myself and Mr. Berman. And basically, what was between me and Mr. Berman is that I've seen Mr. Berman change up too much in reference to my consideration for my vehicle and my services.

Ms. Barwick:

Okay. And on the 30th, again, exactly what happened on the 30th? After you talked to George...

Mr. J. Jones:

Well, no. We went to the office.

Ms. Barwick:

Okay.

Mr. J. Jones:

And that's when I found out that Mr. Berman decided to take \$50 instead of the \$25 out of the \$200 agreement. That's when I knew something was up, you know. And I asked Mr. Berman, you know, is it anything that I've done. Is it anything. I said, you know, why are you doing this. And naturally, Mr. Berman said "You won't be with me long." So I said well, if I won't be with you long, give me something to this effect. What are you telling me. So he said, "Sure." He sat down. Al, Lonnie, all the guys were around. He typed up Exhibit 1.

Ms. Barwick:

Okay. Then what happened after that? You just took it and left or what?

Mr. J. Jones: Yeah. I took the pay after deductions and everything, right, and I rolled out. I rolled out. When I say I rolled out, I left the office, the premises, that part of town.

Ms. Barwick: Okay. So you have no prior knowledge he was gonna take additional monies out that week?

Mr. J. Jones: No. I didn't know it until I got there and saw what was being done.

Ms. Barwick: And then two weeks later, I come in the office. After he had told me that I had to work the two weeks and I faithfully worked the two weeks, I was on the roof by myself where he said I bent the ladder. Okay. The ladder wasn't struck by a bus. I put the ladder on the roof, right. I put the ladder on the 20th Street address. I had to do that job alone. I did that roof by myself. I was assigned to this little white boy but the little white boy couldn't come in on Tuesday and Wednesday, all right. So, I had to take the 90 pound paper up, take the tar paper up - I mean take the tar up, all right. You know, you got this material, this base that you coat it

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with. I had to take that up because we had like shorts on the roof. We didn't have enough to finish the job. It was Tuesday and Wednesday on that job. I left from that job. I went to Darley Avenue to do the same thing. That's where the white boy with the truck caught me and worked with me to balance that out. That was Thursday and Friday.

Ms. Barwick: So you're saying you had been working alone...

Mr. J. Jones: I'd been working alone...

Ms. Barwick: ...for a day and a half until...

Mr. J. Jones: I'd been working for two and a half days.

Ms. Barwick: ...two and a half days. And then a coworker...

Mr. J. Jones: Two and a half days.

Ms. Barwick: ...caught up with you and helped?

Mr. J. Jones: Then he caught up with me cause he knew where the job sites were. He had to call into the office. I got my instructions pretty much from Al. Al said, "Today, Jim, you're gonna do this. You're gonna do that." Fine. "I'm gonna leave you here." Or, "Drop me here and go do that." That's how it was.

Ms. Barwick: Did they give you any documentation at

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all other than that letter, the 30th, saying your work was not satisfactory prior to that date?

Mr. J. Jones:

I'm - No. No. No.

Ms. Barwick:

Okay. And on the 14th when you received your last - Well, you didn't - What happened on the 14th?

Mr. J. Jones:

Well, on the...

Ms. Barwick:

(Inaudible) two week notice after he told you he was gonna fire you. You worked the two week notice. You went in to pick up your check and then what happened?

Mr. J. Jones:

I brought him all these keys. And they could have been in this condition because they were always in the vehicle but they were in a manila bag, all right, similar to this type. As a matter of fact, this might be my (inaudible) bag. I brought that in. I sat the ladder along side the office because my instruction was to return all the belongings that belonged to Berman Real Estate. To my unbeknowing, I didn't give him my truck. All right. So, we argued about the truck to a degree. He said well, he wanted everything out of his truck.

Ms. Barwick:

Well, that's - Okay. That...

Mr. J. Jones: So we went to the truck and we took everything that he thought was his out. And I went back. I said okay. I'm still waiting for my pay. He asked what...

CASSETTE #6780

Hearings Examiner: This is a continuation of Appeal #8813786, February the 2nd, 1989, claimant - James E. Jones. Employer is Morris S. Berman. This is continued from Cassette #0784. Continue. Are you finished?

Ms. Barwick: No. Go on.

Mr. J. Jones: All right. Well,...

Hearings Examiner: I'd like to wind this up.

Ms. Barwick: We're talking about when you went in to get your pay check.

Mr. J. Jones: Well, that's when he asked for the uniform. I told him, I said if you walk me out to the truck I said I'll give you your uniform.

Ms. Barwick: So he wanted you to take the uniform off (inaudible)?

Mr. J. Jones: He said he wanted the enjoyment of throwing away his own uniform. He said he wanted the enjoyment of throwing away his own uniform.

Ms. Barwick: Okay. So what happened...

Mr. J. Jones: Now,...

Ms. Barwick: What happened with the pay?

Mr. J. Jones: I didn't get a pay.

Ms. Barwick: So did you ask (inaudible)?

Mr. J. Jones: I didn't get a pay. I asked for it and that's when he went to, you know, "Give me the truck." I said give me my pay. He said, "Give me the truck." That's when we went into that seesaw thing. And that's when I think I was getting ready to get a little upset about it. And I thought about it. So I pulled out. I left with the vehicle. And I asked him about the arrangement that was supposed to have been from what he said about a truck. And he said, "Well, it was down Mr. (inaudible)."

Ms. Barwick: Okay. Well, we're not gonna get into the truck thing other than just to ask one final question. And that is, was the truck registered to you, the vehicle...

Mr. J. Jones: Yeah. It was registered, insured and everything by me.

Ms. Barwick: Registered and insured in your name?

Mr. J. Jones: Everything. By me.

Ms. Barwick: Okay.

Hearings Examiner: Mr. Berman's van was registered in your

name?

Ms. Barwick: It still is registered...

Mr. J. Jones: No. It's all registered in my name.

Mr. Berman: The title. I am the lienholder.

Ms. Barwick: (Inaudible). There was never any written agreement or anything (inaudible) that Mr. Jones had paid for the vehicle or anything. Mr. Jones thought it was a replacement for the vehicle of his that he had when he went to work for Berman's company.

Hearings Examiner: All right. Are you finished?

Ms. Barwick: Yes.

Hearings Examiner: Okay. Mr. Berman, cross examination?

Mr. Berman: How much time do we have to cross examine? You tell me. I can be very brief. We're now going into...

Hearings Examiner: Ten minutes.

Mr. Berman: Okay. Real fast. A. Mr. Jones, what happened to the ladder? You said the ladder - you never told me what happened to the ladder.

Mr. J. Jones: The ladder fell sideways to the hour.

Mr. Berman: The ladder fell sideways to the house...

Mr. J. Jones: With me on it. Yes, sir.

Mr. Berman: And that's how it got bent? Why didn't you just tell me?

Mr. J. Jones: You just asked.

Mr. Berman: Oh! But you didn't tell me that before that.

Mr. J. Jones: You just asked me, Mr. Berman.

Mr. Berman: Did you ever return the uniform?

Mr. J. Jones: No, sir, Mr. Berman.

Mr. Berman: Still kept the uniform?

Mr. J. Jones: I still have the uniform, Mr. Berman.

Mr. Berman: You knew it was your last day that Friday, yet, you chose not to bring a change of clothes or return the uniforms, isn't that correct?

Mr. J. Jones: I wasn't thinking (inaudible). My job, primarily, was to make sure I did your work that day, not to worry about two uniforms.

Mr. Berman: I see. When you brought the van back, whose material was in that van? Who did it belong to? On the last day.

Mr. J. Jones: On the last day?

Mr. Berman: Yeah.

Mr. J. Jones: It belonged to two friends of mine.

Mr. Berman: And what were you doing with that material?

Mr. J. Jones: I was holding it on my vehicle.

Mr. Berman: Why?

Mr. J. Jones: Because that's the way they wanted me to

have it.

Mr. Berman: Were you doing work on the side with the van?

Mr. J. Jones: No, sir.

Mr. Berman: When I saw you with the material on the back of the van on Roland Avenue, weren't you doing a job on the side?

Mr. J. Jones: No, sir.

Mr. Berman: What was the material from, then, the carpet and...

Ms. Barwick: All of that's irrelevant. It has nothing to do with the termination.

Hearings Examiner: All right. I'll allow...

Mr. Berman: It's very relevant.

Ms. Barwick: No, it's not.

Hearings Examiner: I'll allow the question.

Mr. Berman: What were you doing?

Mr. J. Jones: I picked it up from a friend to take it to a friend.

Mr. Berman: Do you have a license to do home improvement work on the side?

Mr. J. Jones: No, sir.

Mr. Berman: Mr. Jones, did you take and remove any material from 1201 West Lexington Street at any time that belonged to me?

Mr. J. Jones: No, Mr. Berman. No.

Mr. Berman: Why would the child make that - and Mr.

Robinson make that statement?

Mr. J. Jones: Because I gave Eddie's son one dollar to open that door because of the rat infested basement so that I could get my plumbing out of there, that porcelain. All that porcelain that was down there in the...

Mr. Berman: The rat infested basement?

Mr. J. Jones: Yes, sir.

Mr. Berman: How many times had you been in that basement?

Mr. J. Jones: Several times, Mr. Berman.

Mr. Berman: Many times?

Mr. J. Jones: Yes, sir.

Mr. Berman: Did you ever see any rat trappings in there?

Mr. J. Jones: Yes, sir.

Mr. Berman: Did you ever point it out to me?

Mr. J. Jones: Yes, sir.

Mr. Berman: Where did you ever show me?

Mr. J. Jones: I worked with Chris and I showed you. I told you it was all the way underneath the bottom of the very front. Chris wouldn't let us all stay down there. You only sent Chris down there to work. That's right. We had a (inaudible).

Mr. Berman: For the record, I've been down - Never

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mind. There's no rats in there. That's another story. Mr. Jones,...

Mr. J. Jones: (Inaudible) corner house. It's infested with rats, man. Eddie's place is infested with rats..

Hearings Examiner: All right. Let's get on with it.

Mr. J. Jones: ...(Inaudible).

Mr. Berman: Let's.

Hearings Examiner: We've only got a few minutes.

Mr. Berman: Yes. Did you ever return the sheetrock hammer, the tool pouch?

Mr. J. Jones: Mr. Berman, there's no way I could even keep up with those small items. I have no idea...

Mr. Berman: Oh! What did you do with the concrete from Roland Avenue? You don't know about that either?

Mr. J. Jones: No, sir.

Mr. Berman: But it's gone out of there, isn't it?

Mr. J. Jones: On Roland Avenue?

Mr. Berman: Yeah.

Mr. J. Jones: I never knew we had any concrete on Roland Avenue.

Mr. Berman: Okay. What ever happened to the hoe and the (inaudible) that you did on 2026 Hollins Street?

Mr. J. Jones: I still have the hoe and the (inaudible),

Mr. Berman.

Mr. Berman:

You do?

Mr. J. Jones:

Yes, sir.

Mr. Berman:

Who paid for that?

Mr. J. Jones:

I purchased it at Carey Hardware...

Mr. Berman:

No. No. No. Did you pay for it or did you sign the charge ticket?

Mr. J. Jones:

I signed the charge ticket.

Mr. Berman:

And who got the material? You did.

Mr. J. Jones:

I got the material.

Mr. Berman:

And you still have it...

Mr. J. Jones:

Because the (inaudible) in the other truck that you have...

Mr. Berman:

Just answer...

Mr. J. Jones:

...that belongs to me. My tools that I need (inaudible)...

Mr. Berman:

Wait. Wait. Wait. Just...

SIMULTANEOUSLY SPEAKING

Mr. J. Jones:

(Inaudible)...

Mr. Berman:

And the other van that's on Tyler's lot that you had certified mail to come and remove, which you failed to do, how did that van get disabled? What happened to the motor?

Mr. J. Jones:

That was caused from hauling lumber and tarpaper.

Mr. Berman:

If I told you there was no oil in the

engine and because of your failure to put oil in the engine, it burned out, would you agree to that?

Mr. J. Jones: I wouldn't believe you cause you're not a mechanic.

Mr. Berman: Okay. All right. Would you believe me when I went through two clutches with you driving my truck and the transmission that I replaced? Would you believe that? I have the receipts for that. Would you believe that?

Mr. J. Jones: I would call you a liar because I operated both trucks.

Mr. Berman: And there was never a clutch burned out? You didn't have three A's pick you up and tow you in?

Mr. J. Jones: That was for the so-called transmission problem you said because I had no oil.

Mr. Berman: Did you ever check the van?

Mr. J. Jones: Yes, sir. It was my vehicle.

Mr. Berman: Your vehicle?

Mr. J. Jones: Sure.

Mr. Berman: The van that I repossessed from you, it was damage to the right hand side. The door was smashed. The kingpins were bent, the tires were destroyed. How did that happen?

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Mr. J. Jones: I have no idea, Mr. Berman.

Mr. Berman: I'm not even gonna have any more questions for this man. It's a waste of my time...

Mr. J. Jones: And it's a waste of mine.

Mr. Berman: And now you see why Mr. Jones doesn't work for me anymore.

Hearings Examiner: Folks...

Mr. Berman: Well, one last question. Can you identify any of these keys that you returned you took the tags off of?

Mr. J. Jones: I didn't take the tags off of them.

Mr. Berman: I have no further questions.

Hearings Examiner: Okay. Folks, this is a difficult case of fact finding, very difficult. Anyway, it is not my policy to make instant decisions. It's gonna require some studying and review. I might even have to listen to the cassette all over again. I will review this. I will make a decision when I get a chance. You will both get written decisions in the mail eventually. I cannot promise you when you'll get those decisions. I have absolutely no control over when they're mailed out. I can only tell you our policy is to get them out as quickly as

we can. Thank you all for your testimony today. There being no further testimony, this hearing is closed.

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Morris S. Berman  
4010 Glengyle Avenue Baltimore Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

November 11, 1988

Robert W. MacMeekin, Esq.  
2211 Maryland Ave.  
Balto. MD 21213

Re: James E. Jones,

Dear Mr. MacMeekin,

Enclosed please find the following:

1. Copy of contract on the van
2. Copy of letter to unemployment
3. Copy of Assignments
4. Letter of Oct. 14, 1988
5. Affidavit of his working

After you have read the above, please advise what you wish to do.

Yours,

*Morris S. Berman*  
Morris S. Berman

*I'll be back in town by noon  
on the 18<sup>th</sup>.*

*E. Erhelut I.*

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Morris S. Berman  
4010 Glengyle Avenue Baltimore Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

Nov. 11, 1988

Dept. of Unemployment  
1100 N. Eutaw St.  
Balto. MD 21201

Re: James E. Jones  
262 Robert St B1  
SS 212 42 2933  
Hearing 12-13-88

Gentlemen,

I have a trip planned long before this hearing and leave on the 13th and return on the 18th so I can not make this hearing. However, I would like to send in the following:

1. Statement, under oath, this date of a former fellow employee who has seen James working. Keep in mind that before James went to work for him he was an unlicensed home improvement man. Mr. Pollack saw him working today.
2. Letter from me dated October 14, 1988 in which Mr. Jones has failed to return tools worth hundreds of dollars, materials used by him for my jobs, and my truck, valued at \$2,499.00. I guess he thinks I am Santa Clause
3. Copy of just two (2) bills from hardware stores to prove that he bought tools under my accounts and failed to return them. (Invoice 130658 from Mace Fremont and 1104 from Carey Paint)
4. I have been working with him on many occasions when he had the truck filled with various materials and he was taking them somewhere for his mother.
5. On the day he left, when I looked into the truck there were piles of various building materials and he stated that these were for someone else's jobs, not mine. I asked where my tools and materials were, and they were not to be accounted for by him.
6. I just found out that my 10 foot ladder, worth over \$200.00 was bent by a bus, so James told another employee, and it is ruined. Why did he not get the party responsible and protect me from loss.
7. I paid for two truck transmissions he burned out on my pick-up.
8. I paid for all repairs on the truck and allowed him to use it on the week-ends and to drive it at night for the picking up and returning of fellow employees from home. He wanted them to pay for gas, when I paid all the gas bills and the repair tickets. I paid for the truck in full and he has not paid one cent. Nothing is due him.
9. Copy of the repossession letter he signed for so that he knows we are looking to repo the truck. We will have a repo man at the hearing.

There are other items he has done that I will not put in writing at this time as I may want to get a criminal warrant out, as the witness can positively identify him as the party involved in another matter in one of my houses. He has also refused to return my uniform and taken his name tags off, that I paid for, on what he did return.

I could go on, but this is enough. He is working and if not, as long as he has a valid drivers license, he can get a job at Saval Foods, 110 S. Central Ave., 675-7606, as Howard the owner, will be glad to have a good truck driver at \$7.00 an hour. He can start as soon as he calls him. Now-do you want to give him money to stay home and work other jobs or make him work like everyone else.

M S Berman



RECEIVED OCT 1

# CAREY PAINT & SUPPLY INC.

2102 WEST NORTH AVENUE  
BALTIMORE, MD. 21217  
PHONE (301) 523-6600

1104

88

CUSTOMER'S  
ORDER NO.

DATE

NAME

M. BERMAN

ADDRESS

2703 Westwood

PHONE

QUAN.	DESCRIPTION	PRICE	AMOUNT	SOLD BY		MDSE. SOLD		MDSE. RET.		DELIVER TO
				CASH	CHARGE	C.O.D.	CASH	CREDIT		
1	KNIFE		1 99							
			19							
			180							
			10							
			1 70							
RECEIVED THE ABOVE GOODS IN GOOD ORDER										TAX
SIGNED BY James E. Jones										TOTAL

OFFICE COPY

Thank You

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# MACE - FREMONT BUILDING MATERIALS INC.

180658

1102 N. FREMONT - BALTIMORE, MD 21217

PHONE 728-0130, 0131

PLYWOOD  
WALLBOARDS  
LUMBER  
PAINT

METAL LATH  
CEMENT  
GLASS  
HARDWARE  
SAND

SOLD TO: Moore Bros DELIVER TO: 2026 Hollins  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DATE: 10/10/58 SOLD BY: \_\_\_\_\_ CASH:  CHG:  COD:  ON ACCT:  MOSE RET: \_\_\_\_\_ CUST ORD NO: \_\_\_\_\_ DATE PROMISED: \_\_\_\_\_

ORD'D	DEL'D	DESCRIPTION	PRICE	UNIT	AMOUNT
1		Mutton & handle			16.58
1		moton hoe			29.75

10% Handling Charge Will Be Made On All Returned Material  
 Rec'd By: James G. Jones  
 LOADED & CHECKED: \_\_\_\_\_ DELIVERED BY: \_\_\_\_\_ DATE DELIVERED: \_\_\_\_\_  
 Purchase: 46.33  
 TAX: 2.32  
 TOTAL: 48.65

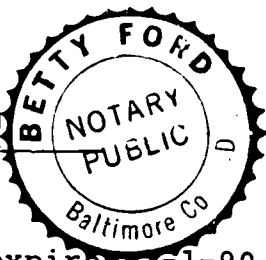
November 11, 1988

To Whom It May Concern

Affidavit on James E. Jones

Before me, a Notary Public, in the County of Baltimore, State of Maryland, this 11th day of November, 1988 personally appeared Lawrence X. Pollack who made oath in due form of law that on this date at approximately 8:30 AM while riding the No. 13 bus to work, he passed the home address of one James Jones and saw him in his work jeans loading silver pipe onto the blue Ford van that he had been driving recently for Morris S. Berman. He called out the window, Hey Jimbo, and James looked around and replied, Hey-Lonnie-Lon. I then went to work.

*Betty Ford*  
NOTARY PUBLIC



A circular notary seal for Betty Ford, Notary Public, Baltimore Co. The seal has a serrated edge and contains the text "BETTY FORD", "NOTARY PUBLIC", and "Baltimore Co".

*Lawrence X. Pollack*  
LAWRENCE X. POLLACK

My Commission expires 7-1-90

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**MORRIS S. BERMAN**

4010 Glengyle Avenue • Baltimore, Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

October 14, 1988

James Jones

Re: Failure to return truck  
Acceptance of service  
Reduction of claim by pay check

Dear Mr. Jones

You have failed to return many tools and my truck to me so I am off setting it by your pay-check this week. You'll be given an accounting as soon as possible

Yours,

Morris S. Berman

J. M. S. FINANCING, INC.

4010 Glengyle Ave  
(301) 764-7444

10/24/88

Baltimore, Maryland 21215  
Evenings (301) 486-1963

JEJ0020  
JAMES EDWARD JONES  
262 ROBERT ST. APT. B-1  
BALTO. MD  
21217

Vehicle Year/Type: 77 FORD VAN  
Vehicle Color: BLUE  
VI Number: E14BH226859  
Employment:  
Phone - Home:  
Phone - Employment:

Dear Customer,

We are writing you in regards to the Credit Grantor Closed End Section of the Annotated Code dated 05/20/88 covering a 77 FORD VAN which agreement is held by J. M. S. Financing, Inc.

This agreement is in default by reason of your failure to make a payment of \$100.00 due on with a total due of \$938.50.

This is to notify you that unless the above amount is paid at our office in ten (10) days after this notice is mailed, it is our intention to repossess the said goods by the above mentioned agreement.

Your rights to the said goods will be terminated upon expiration of fifteen (15) days from the date when notice of repossession is mailed to you, unless prior to the expiration of said fifteen (15) days, you exercise your right to redemption by the payment of the amount then in default, together with the actual and reasonable costs of retaking and storing the said goods.

If you do not exercise your right to redeem the goods, prior to the expiration of the fifteen (15) days, the goods will be sold a public auction. The proceeds of any sale will be applied to the cost of such sale, to the cost of retaking and storage, and then to the unpaid balance owing under the Credit Grantor Agreement at the time of repossession. Any balance remaining will be paid to you, but if a deficiency arises, you may be liable for a deficiency.

If you do agree to make payment, we will not accept a personal check or cash, but will accept a money order.

You will also be subject to the following: Repossession charges of \$200.00 and a storage fee of \$6.00 a day.

Yours,

*Morris S. Berman (S.S.)*  
Morris S. Berman, President

CC: Dealer- HILLCREST MOTORS  
Repossessor- Ron's Towing

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**RETAIL INSTALLMENT CONTRACT and DISCLOSURES Required by Federal Law**

The undersigned Seller hereby sells upon the terms and conditions set forth below and upon the second page hereof and the Buyer (meaning all undersigned Buyers, jointly and severally) hereby purchases the goods (including any accessories, equipment, appliances, fixtures or parts attached thereto) described below, for the deferred payment price as explained below. Following execution hereof, Seller proposes to assign this Agreement and may receive a portion of the finance charge.

BUYER(S) FULL NAME, PLACE OF RESIDENCE AND POST OFFICE ADDRESS <u>James Edward Jones</u> <u>262 Robert St Apt 131</u> <u>Baltimore MD 21217</u>	SELLER(S) SECURED PARTY'S NAME AND POST OFFICE ADDRESS <u>Hillcrest Motors Inc</u> <u>5516 Reisterstown Rd</u> <u>Baltimore MD 21215</u>
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ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate _____ %	FINANCE CHARGE The dollar amount the credit will cost you _____ \$	Amount Financed The amount of credit provided to you or on your behalf \$ <u>1438.50</u>	Total of Payments The amount you will have paid after you have made all payments as scheduled \$ <u>1438.50</u>
Total Sale Price The total cost of your purchase on credit, including your downpayment of: \$ <u>1438.50</u>			

PAYMENT SCHEDULE Number of Payments: <u>10</u> Amount of Payments: <u>\$400.00</u> of each <u>Month</u> beginning <u>6-1-88</u> Day of Month Date <u>Balloon 438.50</u> <u>6-3-88</u>	SECURITY You are giving a security interest in: <input checked="" type="checkbox"/> The goods or property being purchased and proceeds thereof <input checked="" type="checkbox"/> The rights of offset against your money or property in our possession  NOTE: Collateral securing other obligations may also secure this loan. Filing Fees \$ _____ Non-Filing Insurance \$ _____ PREPAYMENT If you pay off early you will not have to pay a penalty. PROPERTY INSURANCE You may obtain property insurance from anyone you want that is acceptable to seller and assignee. If you get the insurance from seller you will pay \$ _____. See your contract documents for any additional information about nonpayment default and any required repayment in full before the scheduled date.
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CREDIT LIFE AND ACCIDENT AND HEALTH INSURANCE Credit Life Ins. and Credit Disability Ins. are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. NEW LIFE: _____ ACCIDENT AND HEALTH: _____ CREDIT LIFE: _____	SIGNATURE _____ _____
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<input type="checkbox"/> NEW <input checked="" type="checkbox"/> USED	Year: <u>77</u>	Make: <u>Ford</u>	Cyl: <u>6</u>	Model: _____	Body Style: <u>Van</u>	Vehicle No: <u>E14BH2689</u>
CHECK ALL "EC" EQUIP: <input type="checkbox"/> RADIO <input type="checkbox"/> HEATER <input type="checkbox"/> AUTO TRANS <input type="checkbox"/> POWER STEERING <input type="checkbox"/> POWER BRAKES <input type="checkbox"/> POWER WINDOWS <input type="checkbox"/> POWER SEATS <input type="checkbox"/> AIR CONDITION <input type="checkbox"/> OTHER: _____						

USE FOR WHICH PURCHASED: BUSINESS \_\_\_\_\_ FARM \_\_\_\_\_ PERSONAL \_\_\_\_\_ OTHER \_\_\_\_\_ Miles 10324

DESCRIPTION OF TRADE-IN YEAR: _____ MODEL: _____ MAKE: _____
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PHYSICAL DAMAGE INSURANCE against accidental damage to the property for a term of \_\_\_\_\_ months as checked:  Comprehensive Coverage,  Fire-Theft and Combined Additional Coverage.  \$ \_\_\_\_\_ Deductible Collision,  Towing and Labor (if included, cost of \$ \_\_\_\_\_ is included in premium). Insurance settlement will be based on actual cash value of property at time of loss, not exceeding limits of liability set forth in policy, and payable to Buyer, Seller or Assignee of Seller, as interests may appear.

VEHICLE SERVICE CONTRACT  
 MECHANICAL BREAKDOWN INSURANCE for a term of \_\_\_\_\_ months and/or \_\_\_\_\_ miles with a \$ \_\_\_\_\_ Deductible.

BUYER MAY CHOOSE THE PERSON THROUGH WHOM THE INSURANCE IS TO BE OBTAINED. 1520367189391/56415

CREDIT LIFE AND/OR ACCIDENT AND HEALTH INSURANCE for a term of \_\_\_\_\_ months according to the terms and conditions set forth in policy or certificate of insurance issued by (check)  
 The Consumers Life Insurance Company, Camp Hill, Pa, MIA DA Policy No. 3538

IF OTHER POLICY, NAME INSURER: State Farm Fire & Casualty  
 HOME OFFICE ADDRESS: Neal Cook 3488756 F0628

1. CASH PRICE Consisting of- <span style="float: right;"><u>1295</u></span>	
a. Cash Price (including accessories) <u>1295</u>	<u>1295</u>
b. Sales Tax <u>64.75</u>	<u>64.75</u>
c. Delivery Charge _____	_____
d. Installation Charge _____	_____
e. License <u>30.75</u>	<u>30.75</u>
f. Certificate of Title _____	_____
g. Registration <u>45.00</u>	<u>45.00</u>
h. _____	_____
i. Cash Price (a. b. c. d. e. f. g. and h) <u>1438.50</u>	
2. DOWN PAYMENT: Consisting of-	
a. Cash Down Payment _____	_____
b. Trade-in Net _____	_____
c. Total Down Payment (2a and b) _____	
3. UNPAID BALANCE OF CASH PRICE (1i - 2c) <u>1438.50</u>	
4. OTHER CHARGES: Consisting of	
*a. Physical Damage Insurance _____	_____
*b. Mechanical Breakdown Insurance _____	_____

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GRADES 6 - High College Pa

**MORRIS S. BERMAN**

4010 Glengyle Avenue • Baltimore, Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

Sept. 30, 1988

James Jones

Re: Continued Employment  
Balance of Money Due

Dear James,

It appears to me that for whatever reason you and I have not been able to say good morning for weeks now, and I have decided that it is time for you and I to part company. I hereby advise you have two (2) more weeks employment with me, and at that time, I would request the return of whatever tools I have loaned you, and the truck and its possessions. -10/14/88 (10)

In addition, I have advanced you \$200.00 and it has been paid back at the rate of \$25.00 per week. Three pays are left for you and there is a balance due of \$100.00. This is causing me to take the sum of \$50.00 from this pay, and then the balance next week, so that you receive whatever you are due in your final pay.

I trust you understand my position.

Yours,

*Morris S. Berman*  
Morris S. Berman

*Robert I*

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**MORRIS S. BERMAN**

4010 Glengyle Avenue • Baltimore, Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

October 14, 1988

C Exhibit II

James Jones

Re: Failure to return truck  
Acceptance of service  
Reduction of claim by pay check

Dear Mr. Jones

You have failed to return many tools and my truck to me so I am off setting it by your pay-check this week. You'll be given an accounting as soon as possible

Yours,

Morris S. Berman

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G. Exhibit I

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Black & Decker Heavy Duty Saw. Cat. 169.00

Milwaukee Saw all Reciprocating saw 229.00

Saw Blade - Box -

6 Blades for wood & for Metal Cutting 26.00

Black & Decker ~~Heavy~~ Heavy Duty jig saw. 119.00

Black & Decker 3' Electric Hammer 139.00

Arrow heavy duty Staple Gun 22.00

4 Boxes of 1/2" Staples 10.00

Battery operated 9.6 Volt Heavy Duty Drill  
by Ryobi 149.00

Sheet Rock Hammer 22 ounce builder's 27.00

Refrigerator Mover 179.00

2 Ton Floor Jack 39.95

Borrowed from Mr. Berma 99.95

1 Polaroid Instant Camera 36.25

2 - 2 packs of #610 Color Film

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 **Maryland**  
Department of Economic &  
Employment Development

William Donald Schaefer  
Governor  
J. Randall Evans  
Secretary

1100 North Eutaw Street  
Baltimore, Maryland  
21201  
(301) 333-5040

— DECISION —

	Date:	MAILED: 3/29/89
Claimant: James E. Jones 262 Robert Street, Apt. B-1 Baltimore, MD 21217	Decision No.:	8813786
	S. S. No.:	212-42-2933
Employer: Morris S. Berman First Floor Rear 4010 Glengyle Avenue Baltimore, MD 21215	L.O. No.:	001
	Appellant:	Claimant

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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

4/13/89

— APPEARANCES —

FOR THE CLAIMANT

FOR THE EMPLOYER:

James E. Jones - Present  
Patricia Brawick - Representative  
Thelma E. Jones - Witness

Morris Berman -  
Proprietor  
George Jones -  
Employee-Witness

FINDINGS OF FACT

The claimant began working for the employer, a property manager, as a full-time laborer sometime in 1987. His last day of work was October 14, 1988, when he was discharged by the employer.

The testimony reveals that the employer has made many allegations of misconduct against the claimant. The Hearing

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Examiner does not find sufficient proof of allegations of misconduct against the claimant. The Hearing Examiner does find as fact that there existed a personality conflict between the claimant and the employer.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, is not supported by testimony and evidence before the Hearing Examiner. Based on the weight of the testimony and the evidence, the Hearing Examiner concludes that there is insufficient evidence of any misconduct on the part of the claimant that would disqualify him as to eligibility for benefits. There did exist a personality conflict between the claimant and his employer. The determination of the Claims Examiner shall be reversed.

DECISION

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. No disqualification is imposed, based on the claimant's separation from his employment with Morris S. Berman. The claimant may contact his Local Office as to the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

*Gerald E. Askin*  
Gerald E. Askin  
Hearing Examiner *REB*

Date of hearing: 2-2-89  
rch/Specialist ID: 01031/784 &6780  
Copies mailed on 3/29/89 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)

9/6

MORRIS S. BERMAN  
4010 Glengyle Avenue Baltimore Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

April 1, 1989

Room 515  
Dept. of Unemployment  
1100 N. Eutaw St.  
Balto. MD 21201

Re: Appeal  
James E. Jones 212 42 2933  
8813786

Gentlemen,

Please enter an appeal to the above decision and advise me that it has been received prior to April 13, 1989.

Yours,

*Morris S. Berman*  
Morris S. Berman

RECEIVED

APR 5 1989

OFFICE OF BOARD APPEALS

97

**DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT**

STATE OF MARYLAND  
BOARD OF APPEALS - ROOM 515  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5032

WILLIAM DONALD SCHAEFER  
Governor

**NOTICE OF APPEAL**

Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
<b>JAMES E. JONES</b>	<b>MACE CONSTRUCTION COMPANY</b>	<b>04/25/89</b>	<b>8813786</b>	<b>212-42-2933</b>

Appellant: **EMPLOYER**

**001**

The Board of Appeals has received an appeal in this case. The Board may deny a petition for review, it may decide to review the case on the record already established, or it may grant a hearing. You will be notified in the future of the Board's action.

The Board's action may change the result of the Examiner's decision. If the Claimant has been previously disqualified from benefits, that disqualification may be affirmed, modified or reversed.

If the Claimant has been granted benefits, a partial or total disqualification may be imposed by the Board's action. If this occurs, the Claimant may be required to pay back some or all of the benefits received.

It is the duty of all parties to keep the Board of Appeals notified of their current address. Please write to the Board at Room 515, 1100 North Eutaw Street, Baltimore, MD 21201 if your address changes.

Mail To:

**MACE CONSTRUCTION COMPANY  
ATTN: MORRIS S. BERMAN  
4010 GLENGYLE AVENUE  
BALTIMORE, MD 21215**

**PAUL G. ZIMMERMANN**

COUNSEL

Copies Mailed To:

**JAMES E. JONES  
262 ROBERT STREET APT. B-1  
BALTIMORE, MD 21217**

**DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT**

STATE OF MARYLAND  
BOARD OF APPEALS - ROOM 515  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

333-5032

WILLIAM DONALD SCHAEFER  
Governor

**NOTICE OF APPEAL**

Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
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Mail To:

**JAMES E. JONES**  
**262 ROBERT STREET APT. B-1**  
**BALTIMORE, MD 21217**

**PAUL G. ZIMMERMANN**

COUNSEL

Copies Mailed To:

**MACE CONSTRUCTION COMPANY**  
**ATTN: MORRIS S. BERMAN**  
**4010 GLENGYLE AVENUE**  
**BALTIMORE, MD 21215**

**DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT**

STATE OF MARYLAND  
BOARD OF APPEALS - ROOM 515  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5032

WILLIAM DONALD SCHAEFER  
Governor

CORRECTED

CORRECTED

**NOTICE OF APPEAL**

Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
<u>JAMES E. JONES</u>	<u>MORRIS S. BERMAN</u>	<u>05/10/89</u>	<u>8813786</u>	<u>212-42-2933</u>

Appellant: **EMPLOYER**

**001**

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Mail To:

JAMES E. JONES  
262 ROBERT STREET APT. B-1  
BALTIMORE, MD 21217

PAUL G. ZIMMERMANN

COUNSEL

Copies Mailed To:

MORRIS S. BERMAN  
ATTN: MORRIS S. BERMAN  
4010 GLENGYLE AVENUE  
BALTIMORE, MD 21215

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
BOARD OF APPEALS - ROOM 515  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
333-5032

CORRECTED

CORRECTED

WILLIAM DONALD SCHAEFER  
Governor

NOTICE OF APPEAL

Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
JAMES E. JONES	MORRIS S. BERMAN	05/10/89	8813786	212-42-2933

Appellant: **EMPLOYER**

001

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Mail To:

MORRIS S. BERMAN  
 ATTN: MORRIS S. BERMAN  
 4010 GLENGYLE AVENUE  
 BALTIMORE, MD 21215

PAUL G. ZIMMERMANN  
 COUNSEL

Copies Mailed To:

JAMES E. JONES  
 262 ROBERT STREET APT. B-1  
 BALTIMORE, MD 21217

# 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. Warnick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

	Decision No.:	405-BR-89
	Date:	May 18, 1989
Claimant:	James Jones 262 Robert St., Apt. B-1 Baltimore, MD 21217	Appeal No.: 8813786 S. S. No.: 212-42-2933
Employer:	Morris S. Berman 4010 Glengyle Avenue Baltimore, MD 21215	L. O. No.: 1 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 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

June 17, 1989

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 adopts the facts and reasoning contained in the decision of the Hearing Examiner.

102



DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from employment with Morris S. Berman.

The decision of the Hearing Examiner is affirmed.

Thomas W. Keech  
Chairman

Raymond A. Varnick  
Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

113

MORRIS S. BERMAN

Plaintiff/  
Counter-Defendant

vs

JAMES E. JONES

Defendant/  
Counter-Plaintiff

**FILED**

**JUL 27 1989**

**CIRCUIT COURT FOR  
BALTIMORE CITY**

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* AT. LAW

*M.D.*

Case No.: 8904 1063/CL92968

*To be filed in  
Case 89164046/CL 98865*

\*\*\*\*\*

AFFIDAVIT

Now comes the Plaintiff, Morris S. Berman, in Proper person, who says:

1. Suit was filed and docketed in the records.
2. That in the original suit filed in Paragraph #8, the Counter-Plaintiff states that as a result of losing access to his vehicle the Counter-Plaintiff has been and continues to be separated from employment opportunities due to his lack of employment and mobility.
3. That the Plaintiff has stated that there is no reason anyone can not have a job and use public transportation.
4. That on Friday, July 21, 1989 at approximately 2:00 P.M, the Plaintiff was in the Hechinger Lumber Yard located at Reisterstown Road Plaza and in aisle A2 when James Jones, who is known to the Plaintiff, walked past him. At the time Mr. Jones was wearing brand new white bib coveralls and had on a blue hat. The Plaintiff walked after him and down the aisle leading to the rear of the building, Mr. Jones turned and faced the Plaintiff.
5. That at that time neither party spoke and Mr. Jones walked away. The Plaintiff walked around the store until he again found him in the tile section and saw him picking up several types of tile, Again he saw the Plaintiff but did

*107*

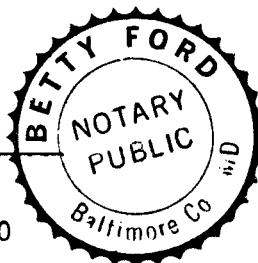
not say anything to him. At that point the Plaintiff went to the check-out counter.

6. While in the check-out line, Mr. James Jones arrived at the booth opposite the Plaintiff and the Plaintiff saw him pay cash for one gallon of floor adhesive and one box of tile. The Plaintiff was unable to go outside to see his means of transportation as he was in the process of going through the check-out line, but with the weight of the items, there is no question that Mr. Jones had transportation.

7. When Mr. Jones was being checked out, the Plaintiff spoke to him and advised him to have a good day. Mr. Jones turned and gave the Plaintiff an ugly look and refused to respond.

BEFORE ME, A NOTARY PUBLIC, in Baltimore County, in the State of Maryland, this 25th day of July, 1989 personally appeared Morris S. Berman, known to me, who made oath in due form of law that the information as set forth in the paragraphs above are true and correct,

*Betty Ford*  
NOTARY PUBLIC



*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON

My Commission expires 7-1-90

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of July, 1989 a copy of the above was mailed to Robert W. MacMeekin, Esq., 2211 Maryland Ave., Balto. MD. 21218, Circuit Court, Court House, Balto. MD. 21202, Separate Case #89164046/CL98865 (Unemployment Appeal), Unemployment Insurance, 1100 N. Eutaw St., Balto. MD 21201, Decision 405-BR-89, Alexander Wright, Jr., Esq., Attorney General's Office, 217 E. Redwood St. (11th fl), Balto. MD 21202. ✓

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON  
4010 Glengyle Avenue  
Baltimore, MD 21215-1557  
301 764-7444

FILED

JUL 21 1977

MORRIS S. BERMAN

vs.

JAMES JONES

and

BOARD OF APPEALS  
Department of Economic  
and Employment Development

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* #89164046/CL98865  
\*

A N S W E R

The Board of Appeals, Department of Economic and Employment Development, in response to Appellant's Petition states:

1. That it denies the allegation in said Petition.
2. That pursuant to Section 7(h), Article 95A, Maryland Annotated Code, the jurisdiction of the court is confined to questions of law, and this is not a trial de novo.
3. That the findings of the Board of Appeals are supported by competent, material and substantial evidence and, there being no allegation of fraud, in accordance with Section 7(h), supra, such findings are conclusive.

WHEREFORE, the Board of Appeals prays that its decision be affirmed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

\_\_\_\_\_  
Alexander Wright, Jr.  
Assistant Attorney General

Amy S. Scherr  
Amy S. Scherr  
Assistant Attorney General

Lynn Weiskittel  
Lynn Weiskittel  
Assistant Attorney General  
217 East Redwood Street  
11th Floor  
Baltimore, Maryland 21202  
Telephone: (301) 333-6943

CERTIFICATE OF COMPLIANCE

Appellee, Board of Appeals, Department of Economic and Employment Development by its attorney Amy S. Scherr and pursuant to Maryland Rule B2 d, hereby certifies that a written notice of Appellant's appeal, a copy of the appeal, and a copy of the petition were mailed, postage prepaid, to James Jones, 262 Robert Street, Apartment B-1, Baltimore, MD 21217.

Respectfully submitted,

Amy S. Scherr  
Amy S. Scherr  
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 1989, I mailed a copy of the foregoing Answer to Morris S. Berman, Appellant, at 4010 Glengyle Avenue, Baltimore, MD 21215-1557 and to James Jones, coAppellee at 262 Robert Street, Apartment, B-1, Baltimore, MD 21217.

Bettie Reed  
Bettie Reed  
Legal Assistant

MORRIS S. BERMAN  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557

Employer

vs

BOARD OF APPEALS  
DEPARTMENT OF ECONOMIC AND  
EMPLOYMENT DEVELOPMENT  
217 E. Redwood Street (1119)  
Baltimore, Maryland 21202

AND

JAMES JONES  
262 Robert Street (B1)  
Baltimore, Maryland 21217

Claimant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE #

FILED

JUN 19 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

89164046

2:57PM 06/13/89 002#0489 A \*\*\*\*

#0891640

#0000046

CIVIL \$80.00

\*\*TTL \$80.00

CHECK \$80.00

CHNG \$0.00

\*\*\*\*\*

APPEAL

Please enter an appeal on behalf of Morris S. Berman, Employer, in Proper Person, from the decision No. 405-BR-89 issued by the Board of Appeals, Department of Economic and Development, State of Maryland, and rendered in the above captioned matter on May 18, 1989.

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557  
301 764-7444

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 9th day of June, 1989, a copy of the forgoing Order for Appeal was mailed to the Board of Appeals, Department of Economic and Employment Development, 217 E. Redwood Street, (1119) Bal-imore, Md. 21202 and to James Jones, 262 Robert St., (B1), Balto. Md 21217.

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON

*JS*

MORRIS S. BERMAN  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557

Employer

vs

BOARD OF APPEALS  
DEPARTMENT OF ECONOMIC AND  
EMPLOYMENT DEVELOPMENT  
217 E. Redwood Street (1119)  
Baltimore, Maryland 21202

AND

JAMES JONES  
262 Robert Street (B1)  
Baltimore, Maryland 21217

Claimant

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE #  
\*  
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PETITION

The Petition of Morris S. Berman, In Proper Person, respectfully represents:

1. Employer is aggrieved by a decision of the Board of Appeals that granted unemployment benefits to a claimant who did not deserve them,

2. The Board of Appeals and the Appeals Referee erred in the following manner.

A. There was not enough substantial evidence to support the decision of the Board.

B. They erred as a matter of law in their decision to grant benefits.

C. The Board erred in their review of the adoption of the facts by the Hearing Examiner and their decision that the Claimant was discharged but not for gross misconduct or conduct connected with his work within the meaning of Section 6(B) or 6(C).

3. The Board erred for such other reasons as may become apparent from a reading of the record.

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of June, 1989 a copy of the forgoing Petition was mailed to the Board of Appeals, Department of Economic and Development, State of Maryland, 217 E. Redwood Street, (1119) Baltimore, MD 21202 and James Jones 262 Robert Street (B1) Baltimore, MD 21217.

*Morris S. Berman*  
MORRIS S. BERMAN, PROPER PERSON  
4010 Glengyle Avenue  
Baltimore, Maryland 21215-1557  
301 764-7444



**MORRIS S. BERMAN**

4010 Glengyle Avenue • Baltimore, Maryland 21215-1557

Business (301) 764-7444

Residence (301) 486-1963

June 9, 1989

Circuit Court  
Court House  
Balto. MD 21202

Re: Employment Appeal

Att: Mrs. Battle,

As per our conversation enclosed please find the Appeal and check for \$80.00.

Yours,

  
Morris S. Berman

D.Lee  
2-1-10  
Image 153

**MSAREF.NET, MSA SC 5458**  
**An Archives of Maryland Publication**

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**Home** | ▶ **End Session**

**MSA SC 5458-82-150**

**Dates:** 1989-1994

**Description:** Circuit Court for Baltimore City, Cases # 94004032; 94018024

scan whole case with following sequential file numbers

msa\_sc5458\_82\_150\_[full case number]-####

upload pdfs per usual

Cases 94004032 and 94018024 scanned and uploaded by Ray C. on 1/25/10.

Please follow the same procedure for the following:

WOODLIFF VS SEC. OF PUBLIC SAFETY Box 84 Case No. 89047041 [MSA T2691-2720, OR/10/21/82]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

TIMMONS V JOHNS HOPKINS HOSPITAL Box 130 Case No. 89075003 [MSA T2691-2766, OR/10/22/44]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

SIMMS VS SEC OF PUB SAFETY Box 276 Case No. 89142059 [MSA T2691-2912, OR/11/2/22]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

BERMAN VS BOARD OF APPEALS, ET AL Box 319 Case No. 89164046 [MSA T2691-2955, OR/11/2/65] *DL 2-1-10 Image 153*

File should be named msa\_sc5458\_82\_150\_[full case number]-####

TROY VS ALLSTATE INS Box 355 Case No. 89184050 [MSA T2691-2991, OR/11/3/17]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

HIRSCHFIELD VS BD OF MUNICI APL Box 367 Case No. 89194041 [MSA T2691-3003, OR/11/3/29]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

FAISON VS JEFFERSON Box 385 Case No. 89207040 [MSA T2691-3021, OR/11/3/47]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

MITCHELL VS PROVIDENT BANK Box 389 Case No. 89209043 [MSA T2691-3025, OR/11/3/51]

File should be named msa\_sc5458\_82\_150\_[full case number]-####