

CASE NO. **90164037**

Part _____ of _____ Parts

In The Circuit Court for Baltimore City
CIVIL

In the Matter of

VICKI L. JEFFERSON POINDEXTER
VS.
ALEXANDER & ALEXANDER, INC.

115008

C

DATE	DOCKET ENTRIES	NO.
11/6/90	Dcts Alexander + Alexander removed & support of Decision of the Board of Appeals is.	
11/21/90	Staffs reply memo pd.	9
11/27/90	Case submitted to the Court for a determination without the aid of a jury	
"	Held sub curia (Hallander)	
11/11/91	The Decision of the Board of Employment & Economic Development is "Reversed"	
"	Case remanded for proceedings consistent with opinion of the Court. (Hallander) <i>all memo</i>	
"	memo opinion & order pd 12/10/91. 10	

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 90164037/CL11500 PAGE 1 of

PARTIES	ATTORNEY(S)
VICKI L. JEFFERSON POINDEXTER	GEORGE A. EPSTEIN <i>523712</i>
VS.	
ALEXANDER AND ALEXANDER, INC. <i>Board of Appeals, Department of Economic and Employment Development</i>	<i>469909</i> Steven D. Frankel <i>509778</i> Amy S. Schery Lynn Weiskittel <i>911960</i>

DATE	DOCKET ENTRIES	NO.
6-13-90	ORDER FOR APPEAL FROM THE ECONOMIC AND EMPLOYMENT DEVELOPMENT, FD.	1
<i>6/22/90</i>	<i>app & return for appeal for</i>	<i>✓</i>
<i>7/12/90</i>	<i>app of attorney Amy S. Schery for deft Board of Appeal Department of Economic and Employment Development same day answer fd.</i>	<i>3</i>
<i>7/13/90</i>	<i>app. Steven D. Frankel for deft (alexander + alexander) answer fd</i>	<i>4</i>
<i>7/25/90</i>	<i>Transcript of record (Oct C.T.F) pp 90. Notice sent in accordance with the M.D rule B-12</i>	<i>5</i>
<i>8/23/90</i>	<i>app. then orders to support appeal for.</i>	<i>6</i>
<i>9/4/90</i>	<i>app. of attorney Lynn Weiskittel for deft Board of Appeals same day memo in support.</i>	<i>7</i>

VICKI L. JEFFERSON POINDEXTER*	IN THE	
Appellant	*	CIRCUIT COURT
v.	*	FOR
ALEXANDER AND ALEXANDER,	*	BALTIMORE CITY
INC. and BOARD OF APPEALS,	*	Case No. 90164037/
DEPARTMENT OF ECONOMIC AND	*	CL 115008
EMPLOYMENT DEVELOPMENT	*	
Appellees	*	
	*	
* * * * *		

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

Vicki L. Jefferson Poindexter ("Poindexter" or "Appellant") has appealed from the decision of the Board of Appeals (the "Board") of the Department of Economic and Employment Development (the "Department"), dated May 14, 1990. The Board found that Poindexter was discharged for gross misconduct -- insubordination -- connected with her employment, within the meaning of Md. Ann. Code, Art. 95A,¹ Sec. 6(b). She was therefore denied unemployment insurance benefits R.1-5.²

The Board's decision totally disqualifying Poindexter from receipt of benefits stands in marked contrast to earlier administrative decisions. On June 12, 1989, a Claims Examiner of the Department determined that Poindexter's actions

1. Unless otherwise noted, all statutory references are to Maryland Annotated Code, Article 95A.

2. The letter "R" refers to the record which has been numbered in this case.

amounted to simple misconduct, not gross misconduct, within the meaning of Sec. 6(c), and a period of disqualification was imposed. R.1-5. The Employer timely appealed (R.7). In a decision dated August 4, 1989, the Hearing Examiner determined that Appellant had not engaged in either misconduct or gross misconduct, and reversed the decision of the Claims Examiner. R. 13-15.

Thereafter, the Employer appealed to the Board. R.16. However, because the tape recording of the testimony adduced before the Hearing Examiner was lost (R.9a), the Board was unable to review the case and remanded it for a new hearing. R.34. Another hearing was held before a different Hearing Examiner, which again resulted in a decision, on March 7, 1990, that Poindexter did not commit either simple misconduct or gross misconduct. R.209-212.

Again, the Employer appealed to the Board (R.213-215). Without a hearing, the Board found that Appellant's conduct constituted gross misconduct, and reversed the decision of the Hearing Examiner. According to the Board, on May 26, 1990, Poindexter refused to obey two direct and reasonable orders of her supervisor. The Board thus found Poindexter totally disqualified from receipt of benefits. R.230-232. Poindexter's timely appeal to this court is the subject of the instant opinion.

II. Factual Summary

Poindexter was employed by Alexander and Alexander, Inc. ("Employer") as a word processor from October 5, 1987 to May 30, 1989 (R.1). Appellant was discharged on May 30, 1989 as a result of an incident which occurred on May 26, 1989.³

The Board found that on May 26, 1989, Appellant was observed by her supervisor, Sandy Vernago ("Vernago"), conversing with a co-worker, Greg Powell ("Powell"). R.58, 166-168, 174.⁴ Vernago told Poindexter to return to work. Instead of returning immediately to her desk, Poindexter responded that she was being treated unfairly because others were talking and were not told to return to work. R.231.

Shortly thereafter, the supervisor asked Poindexter to come to the office, but she refused. Several minutes later, when the supervisor again requested to see Appellant, she complied. On these facts, the Board found Poindexter twice failed to obey direct and reasonable orders of her supervisor, and that her actions constituted gross misconduct.

III. Scope of Review

Section 7(h) governs the standards of judicial review in connection with the administrative adjudication of unemployment insurance benefits. It provides in pertinent part:

In any judicial proceeding [in regard to claims for benefits], the findings of the Board of Appeals

3. May 26, 1989 was a Friday. The following Monday was Memorial Day, and Poindexter was discharged on the next work day.

4. Although there were some discrepancies as to the events of May 26, 1989, much was undisputed. The Board stated that even accepting, arguendo, Poindexter's version of events, her conduct amounted to insubordination.

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. 69 (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, 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 question presented by this appeal is whether Appellant's conduct on May 26, 1989 constituted gross misconduct, so as to disqualify her from the receipt of unemployment benefits.

"Gross misconduct" is defined in Section 6(b) as:

[C]onduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest, or (2) a series of repeated violations of employment rules proving that the employer has regularly and wantonly disregarded his obligations. Misconduct not falling within this definition shall not be considered gross misconduct.

It is undisputed, that the Board's decision was based solely on the events of May 26, 1989.⁵ R.230. Clearly, the

5. It appears from the record that there was a history of some difficulty between Poindexter and the Employer. R.78,80,94-95. However, the Employer stated in the Fact Finding Report of June 12, 1989 that the reason for discharge concerned only the events of May 26, 1989. R.1.

Board did not find a "series of repeated violations" within the meaning of Section 6(b)(2). While the incident of May 26 may have been the "straw that broke the camel's back," it is all that this court can consider as to the question of gross misconduct. Accordingly, this court's analysis must necessarily focus on Section 6(b)(1).

There is no litmus test to determine what constitutes deliberate and willful misconduct within the meaning of Section 6(b)(1). Employment Security Board of Maryland v. LeCates, 218 Md. 202 (1959). What is required is:

an utter disregard for the employee's duties and obligations to his employer and [conduct] calculated to disrupt the discipline and order requisite to the proper management and control of the company.

Id. at 210; Watkins v. Employment Security Administration, 266 Md. 223 (1972).

The conduct which courts have typically found to constitute gross misconduct bears little similarity to the events of May 26. Typically, the categorical refusal of an employee to perform a duty directed by a supervisor (Saxton v. Commonwealth, Unemployment Compensation Bd. of Review, 71 Pa. Commw. 636 (1983); Dearolf v. Commonwealth, 59 Pa. Commw. 493 (1981)), the use of profanity and abusive language (Accord v. Labor & Industrial Relations Com., 607 S.W. 2d 174 (Mo. App. 1980)), threats or actual violence toward a supervisor (Dept. of Economic and Employment Development v. Owens, 75 Md. App. 472 (1988)), unauthorized use of an employer's motor vehicle (LeCates, supra), and deliberate deception (Painter v. Dept. of

Employment and Training, 68 Md. App. 356 (1986)) are sufficient to warrant total disqualification. Poindexter's flip remarks were not of such a magnitude.

This court is of the view that the Board's factual findings do not support the legal conclusion that Poindexter committed gross misconduct as it has been defined by Maryland courts, or the courts of other jurisdictions. Employers cannot expect that their employees will always be totally docile or servile in regard to their immediate supervisors and/or employers. Raven v. Levine, 338 N.Y.S. 2d 183, 186 (1972).

Where, as here, there is no more than an isolated, angry outburst, complete disqualification from employment benefits is not warranted. See Oman v. Daig Corp., 375 N.W. 2d 533 (Minn., 1985). What the court said in LeCates, supra, 218 Md. 202, is certainly instructive:

Ordinarily a single instance of misconduct would not bring an employee within the disqualifying terms of [the statute]. The important element to be considered is the nature of the misconduct and how seriously it affects the claimant's employment or the employee's rights. Obviously no hard and fast rule can be made to cover such a situation.

Id. at 209.

In Windsperger v. Broadway Liquor Outlet, 346 N.W. 2d 142 (Minn. 1984), the Supreme Court of Minnesota, applying the same standard for gross misconduct as that applicable in Maryland, ruled that an employee's 15 to 20 minute temper tantrum did not constitute gross misconduct. The employee threw the tantrum in

the back room of the store upon being informed of a change in her work schedule. In ruling that this conduct was not gross misconduct, the court noted that the employee's isolated outburst did not disrupt the store or otherwise adversely affect her employer's business. 346 N.W. 2d at 145.

Similarly, in Beaird-Poulan v. Brady, 154 So. 2d 589 (La. 1963), an employee refused the direct order of his supervisor to pick up molds which had been knocked off a conveyor belt by a co-employee. The court concluded that one "hot-headed" incident was insufficient to justify disqualification. What the court said in Brady is apposite here:

Although certainly the employee should not have disobeyed his foreman's order and should probably (as suggested by employer's counsel) have instead sought redress from the foreman's superiors for any unfair treatment, nevertheless, claimant's hot headed refusal to obey what he felt to be an unjust order does not, under the circumstances shown, constitute misconduct in 'wanton and willful disregard of the employer's interest.'

Id. at 590. (Emphasis added).

The Commonwealth Court of Pennsylvania's decision in Loder v. Unemployment Comp. Board of Review, 6 Pa. Commw. 484 (1972) is also analogous. In Loder, a grocery store employee was requested in the morning to attend a meeting that very afternoon regarding "her attitude" toward her job. The employee informed her employer that she would not attend the meeting, and as a result of her refusal, the employee was discharged. The Loder court reversed the Unemployment Board's finding of gross misconduct, recognizing that

[W]e cannot accept the Board's characterization of the acts of Loder in this case to be hostile to her employer's best interest. [This] single incident is not of sufficient nature that it could be classified as inimical to her employer's best interest.

Id. at 489.

The factual circumstances underlying Poindexter's discharge reflect no more than the same type of abbreviated, "hot-headed" incident which courts have generally considered insufficient to justify the total denial of unemployment benefits. Appellant's protestations that she was being treated unfairly, and that she would return to work when everyone else did, were inappropriate responses to Vernago's directive. While this court does not condone Appellant's actions, it cannot conclude that her conduct rose to the level of a willful and wanton disregard for the interests of the Employer. The whole episode lasted only a few minutes and the record reflects that Poindexter returned to work immediately following her conference with Vernago (R.64,115). The impact on the Employer's business was, at most, negligible. Moreover, the record is devoid of any adverse consequences to the Employer as a result of the incident.

The court's characterization in Silva v. Nelson, 106 Cal. Rptr. 908, 911 (1973) of a verbal confrontation between an employee and his employer over one unauthorized absence seems pertinent here. The court concluded that the employee's

expletive was a "mere mistake, or error in judgment - a 'minor peca-dillo.'" The May 26 incident is a similar peca-dillo, but hardly a willful and wanton disregard of her Employer's rights within the meaning of Section 6(b)(1).

Although Appellant's actions did not amount to gross misconduct, she did engage in simple misconduct. The term "misconduct" is undefined in Section 6(c). Allen v. Core Target Youth Program, 275 Md. 69 (1975). However, in Rogers v. Radio Shack, 271 Md. 126, 132 (1974), the Court stated:

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.

Id. at 132.

The record reflects that on May 26, 1989, the Employer had no specific rules or policies prohibiting employees from leaving their desks for brief periods or from talking to co-workers (R.195-196). But Poindexter's impertinence clearly violated the policies set forth in the Employer's Personnel Policies and Practices Manual regarding "Refusal to perform work as directed or willful neglect of duty", in effect on May 26, 1989. (R.91). Her actions thus fall squarely within the definition of simple misconduct. Accordingly, the appropriate penalty for a discharge from employment for misconduct connected to work should be imposed.

Based on the foregoing, it is, this 11th day of January, 1991, by the Circuit Court for Baltimore City, ORDERED, that the decision of the Board of Employment and Economic Development be reversed, and this case be remanded for proceedings consistent with this Opinion.

Ellen L. Hollander
Ellen L. Hollander, Judge

cc: George Epstein, Esquire
Amy S. Scherr, Esquire
Steven D. Frenkil, Esquire

FILED

NOV 21 1990

CIRCUIT COURT FOR BALTIMORE CITY

VICKI L. JEFFERSON POINDEXTER

Appellant

vs.

ALEXANDER and ALEXANDER, INC.

and

BOARD OF APPEALS,
DEPARTMENT OF ECONOMIC
AND EMPLOYMENT DEVELOPMENT

Appellees

BALTIMORE CITY

Case #: 90164037/CL115008

* * * * *

APPELLANT'S REPLY MEMORANDUM

VICKI L. JEFFERSON POINDEXTER, Appellant, by her attorneys, GEORGE A. EPSTEIN and ROCHLIN & SETTLEMAN, P.A., submits this Memorandum in reply to the Memoranda filed by Appellees in this matter.

It should be noted initially that the Memorandum filed by the Board of Appeals, and adopted by the Employer, is internally contradictory in key respects, and that these contradictions render large portions of that Memorandum irrelevant to the issues involved in this appeal. For example, on Page 7, the Board takes considerable pains attempting to show that it did not take a categorical approach in its decision in this case that insubordination automatically constitutes gross misconduct. Despite this, on Page 11, the Board once again states categorically that "[a]n employee who is fired for failure to follow reasonable orders given by a supervisor is not eligible for

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unemployment insurance benefits." As Appellant demonstrated in her Memorandum in Support of Appeal, this categorical approach is without support in Maryland law.

The Board's Memorandum is equally self-contradictory concerning the crucial matter of the findings of fact made by the Board in this case. On Page 8 of its Memorandum, the Board correctly states that "[t]he Board accepted the Appellant's incident of the version [sic], and there is no factual dispute." Despite this, the Board states on Page 13 that "[t]he testimony at the hearing was in conflict. The Board clearly resolved that conflict in favor of the Employer." This statement is simply incorrect. The only determinations that the Board made as to credibility were made arguendo and favored the Appellant as did the credibility determinations made by both of the Board's hearing examiners. The Board's decision was not based on factual findings unfavorable to Appellant, which would be unreviewable by this Court; it was based on conclusions unsupported by evidence and on misapplication of the law, which this Court is obligated to review and correct.

In its Memorandum, the Board also misstates Appellant's position as to a key issue. On Page 7, the Board stated that "Appellant does not argue that she failed to follow her supervisor's order, but merely that it did not seem fair to her that she was asked to go back to work when other people appeared

not to be working either." On the contrary, Appellant argues strenuously that she never failed to obey a direct order of her supervisor; in fact, Part II of the Argument section of Appellant's Memorandum in Support of Appeal was devoted to this contention. (Appellant's Memorandum in Support of Appeal at pp. 10-11).

Unable to cite any Maryland case law directly supporting its decision in this case, the Board seeks to rely on two Pennsylvania decisions, Dearolf v. Commonwealth, 49 Pa. Cmwlth. 493, 429 A.2d 1284 (1984), and Tisak v. Commonwealth, 56 Pa. Cmwlth. 399, 424 A.2d 635 (1981). Those cases are inapposite for two reasons. First, both of those cases concerned employees who were discharged for refusal to obey a direct order. In contrast, Appellant did not refuse to obey any order. When she was asked to return to work, she did so, after speaking her mind about the situation; when she was given a direct order to come into her supervisor's office, she immediately obeyed. Secondly, while the Pennsylvania courts might have taken a categorical approach to what constitutes misconduct, the Maryland courts have not. On the contrary, the Court of Appeals has stated, quoting a law review commentator, that, "'[t]urning from the requisite state of mind to the type of act or failure to act necessary for 'misconduct' we are necessarily thrown into a shifting framework of reference.'" Employment Security Board of Maryland v. LeCates,

145 A.2d 840 (Md. 1958).

Most decisions of courts of other states holding a discharged employee disqualified from benefits because of insubordination appear to involve some sort of aggravated misconduct. For example, in Carter v. Michigan Employment Security Commission, 364 Mich. 538, 111 N.W. 2d 817 (1961), the employee not only failed to obey a direct order, he also threatened to punch his supervisor in the nose. Similarly, in Hunt v. Unemployment Compensation Board of Review, 197 Pa. Super. 435, 180 A.2d 108 (Pa. Super. 1962), the insubordinate employee made threatening remarks to his supervisor. Campbell v. Doyal, 190 So.2d 661 (La. App. 1966), Wilson v. Brown, 147 So.2d 27 (La. App. 1962), and In re Rodriguez, 16A.D.2d 1003, 229 N.Y.S. 2d 270 (N.Y. App. 1962), involved employees who had disregarded repeated warnings about their conduct. No such aggravating factors are present in this case.

In cases similar to this case, involving isolated instances of dissension between an employee and a supervisor, the Courts have held that there was no disqualifying misconduct. In Shannon Engineering & Construction, Inc. v. Mississippi Employment Security Commission, 549 So.2d 446 (Miss. 1989), the court defined "insubordination" for unemployment law purposes as "[a] constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper

authority." Id. at 449 (emphasis supplied).

Further, the court held that "[i]n keeping with...public policy...in unemployment compensation cases, the employer bears the burden to prove by substantial, clear, and convincing evidence that a former employee's conduct warrants disqualification of benefits." Id. at 450. Certainly, no constant or continuing intentional refusal to obey an order has been proved in this case.

In Kimble v. Brown, 162 So.2d 415 (La. App. 1964), the employee remarked to his supervisor that "you don't do much of nothing." Id. at 416. The Court stated that:

The record is wholly void of evidence supporting an attitude of constant disrespect or disagreeableness toward Kimble's superiors. The question, therefore, is, Does this isolated occurrence justify a conclusion that the employee has been guilty of such misconduct as to bring about his disqualification to receive unemployment compensation? We hold that, predicated on this evidence, the claimant has not been guilty of such misconduct as to forfeit his statutory benefits.

Id.

In Robinson v. Ross, 64 A.D. 2d 1005, 408 N.Y.S. 2d 840 (N.Y. App. 1978), the employee was prevented from entering the plant because he did not have his identification badge, which he had left in his locker. Despite being ordered to wait at the gate, he entered the plant, went into his locker, and obtained his badge. The court held that these actions, which resulted in his discharge for failing to follow instructions, did not rise to the

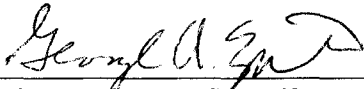
level of disqualifying misconduct.

Most instructive is the case of Raven v. Levine, 40 A.2d 128, 338 N.Y.S. 2d 183 (N.Y. App. 1972). The supervisor in that case, in accordance with company policy, gave the employee a direct order to get rid of her coffee. The employee flatly refused, in a manner the supervisor characterized as "belligerent" and "flippant". Id., 338 N.Y.S. at 185. The employee was subsequently discharged. Observing that "[i]n the ordinary course of events there is no reason to expect that employees will at all times be absolutely docile or servile in regard to their immediate supervisors and/or employers", the court concluded that "there is no reasonable reference that this was other than mere petty irritability on the part of both the supervisor and the claimant." Id., 338 N.Y.S. at 186. Accordingly, the employee was held to be entitled to unemployment compensation.

The instant case involved just the same sort of petty irritability on both sides. In determining whether Appellant committed an act or omission that would disqualify her from benefits, this court should bear in mind that the unemployment compensation statute should be liberally construed in her favor. Woskoff v. Desta Enterprises, Inc., 187 So.2d 101 (Fla. App. 1966); see Allen v. Core Target City Youth Program, 275 Md. 69, 338 A.2d 237, 241 (1975). Construing the statute in that fashion, this court should hold that Appellant did not commit misconduct

or gross misconduct. Accordingly, the decision of the Board of Appeals should be reversed.

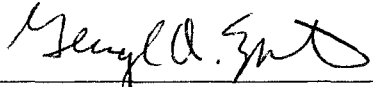
ROCHLIN & SETTLEMAN, P.A.



GEORGE A. EPSTEIN
110 East Lexington Street
Baltimore, Maryland 21202
(301) 539-3070
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 20th day of November, 1990, that a copy of the foregoing Appellant's Reply Memorandum was mailed, postage prepaid, to Lynn Weiskittel, Esquire, Assistant Attorney General, 217 East Redwood Street, Room 1101, Baltimore, Maryland 21202, and to Steven D. Frenkil, Esquire, Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201.



GEORGE A. EPSTEIN

VICKI L. JEFFERSON POINDEXTER,

Appellant,

v.

ALEXANDER & ALEXANDER INC.,

and

BOARD OF APPEALS
Department of Economic and
Employment Development,

Appellees.

* * * * *

* IN THE **EILED**

* **CIRCUIT COURT** 1990

* FOR **CIRCUIT COURT FOR**
BALTIMORE CITY

* **BALTIMORE CITY**

* #90164037/CL115008

*

*

**MEMORANDUM OF ALEXANDER & ALEXANDER
IN SUPPORT OF DECISION OF THE BOARD OF APPEALS**

Appellee, Alexander & Alexander Inc., by its undersigned counsel, advises the Court that it adopts and incorporates by reference the Memorandum In Support Of The Board Of Appeals filed by the State of Maryland on August 30, 1990.

Alexander & Alexander respectfully submits that the decision of the Board of Appeals be affirmed.

Respectfully submitted,

Steven D. Frenkil

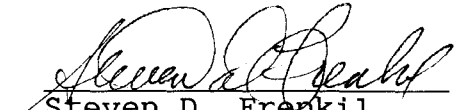
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(301) 539-5040

Attorneys for
Alexander & Alexander Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ⁶5th day of September, 1990, I mailed a copy of the foregoing Memorandum to George A. Epstein, Esquire, Attorney for Appellant, Rochlin & Settleman, P.A., 110 East Lexington Street, Baltimore, Maryland, 21202, and to Lynn Weiskittel, Assistant Attorney General, Room 1101, 217 East Redwood Street, Baltimore, Maryland, 21202.


Steven D. Frenkil

FILED

Sept 14 1990



VICKI L. JEFFERSON POINDEXTER,	*	FOR IN THE
		CITY
Appellant	*	CIRCUIT COURT
	*	FOR
ALEXANDER & ALEXANDER, INC.	*	BALTIMORE CITY
and	*	#90164037/CL115008
BOARD OF APPEALS,	*	
DEPARTMENT OF ECONOMIC	*	
AND EMPLOYMENT DEVELOPMENT,	*	
Appellees	*	

* * * * *

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 Vicki L. Jefferson Poindexter, Appellant, was not entitled to unemployment insurance benefits by a decision dated May 14, 1990. The Board found that Ms. Poindexter was discharged for gross misconduct connected with her employment within the meaning of Maryland Annotated Code, Article 95A, Sec. 6(b).¹ Ms. Poindexter 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

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

W.S.

Board made no errors of law and that, therefore, the Board's decision should be affirmed.

II. Scope of Review

Judicial review of the administrative adjudication of unemployment insurance appeals is governed by Maryland Annotated Code, Article 95A, Sec. 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 denying Ms. Poindexter unemployment insurance benefits is correct as a matter of law.

A. Statement of Facts

Vicki L. Jefferson Poindexter was employed by Alexander and Alexander, Inc. from October 5, 1987 to May 30, 1989 as a word processor (R. 1).² The Appellant was discharged after an incident on May 26, 1989.

On May 26, 1989, the Appellant was observed by her supervisor talking with a co-worker (R. 58, 116-168, 174). The supervisor came over and told the Appellant to go back to work (R.). The Appellant did not make a move to return to her desk, but instead stated that she would go back to work when others did and that she was being treated unfairly because others who were talking were not being told to stop (R. 169).

The supervisor then "asked" the Appellant to come to the private office of another supervisor to continue their discussion; again the Appellant refused (R. 111). She did not (R. 111, 169). When the supervisor demanded that the Appellant come into the office to continue the discussion, the Appellant complied (R. 113, 114, 171).

The following day the Appellant was informed that she was being discharged for insubordination (R. 95, 96).

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

Upon application for unemployment insurance benefits, a Claims Examiner of the Department of Economic and Employment Development held that Ms. Poindexter was discharged from work for misconduct connected with her work within the meaning of Sec. 6(c) of the Maryland Unemployment Insurance Law and imposed a five week penalty (R. 5). Ms. Poindexter appealed (R. 6, 7). Following an evidentiary hearing, a Hearing Examiner reversed the Claims Examiner's decision, removed all disqualification, holding that the claimant was discharged but not for misconduct or gross misconduct connected with the work (R. 15). Because the tape of the hearing was lost, a subsequent hearing was conducted on January 25, 1990 (R. 52-208). Following the hearing, the Hearing Examiner held that the claimant was discharged but not for misconduct or gross misconduct connected with her work, and no disqualification was imposed (R. 211).

An appeal on behalf of Alexander and Alexander, Inc. was timely filed to the Board (R. 213-222). Following a review of the record, the Board reversed the Hearing Examiner and concluded that the Appellant was discharged for gross misconduct connected with her work, specifically insubordination (R. 230-232). The Board held that the incident on May 26, 1990 constituted two refusals to obey direct orders of her supervisor, that such orders were reasonable, and that such conduct constituted gross misconduct within the meaning of the Maryland Unemployment

Insurance Law. A total disqualification from benefits was imposed (R. 230-232).

A timely appeal was filed to circuit court.

B. The decision of the Board is based upon substantial evidence and is correct as a matter of law.

The Board found that Ms. Poindexter's conduct constituted gross misconduct pursuant to Sec. 6(b) that provides, in pertinent part:

. . .the term "gross misconduct" shall include conduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to his employer's interest, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations.

The Board held that Ms. Poindexter's conduct met this definition of gross misconduct (R. 230-232).

The Maryland Court of Appeals has stated that there is no hard and fast rule to determine what constitutes deliberate and willful conduct. Employment Security Board of Maryland v. LeCates, 218 Md. 202, 210, 145 A.2d 840, 844 (1959). Gross misconduct has been described as displaying ". . . an utter disregard for the employee's duties and obligations to his employer and . . .[conduct] calculated to disrupt the discipline and order requisite to the proper management and control of the company. . .". LeCates, 218 Md. at 210, 145 A.2d at 841; Watkins v. Employment Security Administration, 266 Md. 223, 292 A.2d 653 (1972).

Appellant argues that "the Board stated categorically that 'an employee's refusal to obey an order of her supervisor is gross misconduct.'" (R. 131). Appellant has misstated the Board's decision. The Board, in its decision, noted that it has quote "repeatedly held that an employee's refusal to obey an order of her supervisor is gross misconduct" (R. 231) (emphasis added). The Board did not make a categorical statement and specifically cited three other Board decisions in which the Board had found, on the facts of each particular case, that refusal to obey a supervisor's order constituted gross misconduct. The Board assesses each case on the facts of that case before deciding whether considering all the circumstances, the employee's conduct constitutes gross misconduct. Appellant's argument regarding a "categorical approach taken by the Board that insubordination automatically constitutes gross misconduct" is not based upon an accurate reading of the Board's decision (Appellant's Memorandum, pp. 6-8).

Appellant's argument that there are no reported Maryland decisions holding that a single incident of insubordination can constitute gross misconduct is irrelevant, particularly in light of the fact that insubordination and failure to follow the reasonable order of a supervisor is conduct precisely within the statutory definition of gross misconduct. Section 6(b).

Appellant does not argue that she failed to follow her supervisor's order, but merely that it did not seem fair to

her that she was asked to go back to work when other people appeared not to be working either. The Board accepted the Appellant's incident of the version, and there is no factual dispute (R. 231). Acknowledging her version of the events, the Board held that her conduct was a deliberate and willful disregard of a standard of behavior that her employer had a right to expect.

No serious argument has been made that Appellant's conduct was not "deliberate and willful"; she does not contend that her conduct was accidental.

The Board held, most reasonably, that Maryland employers have a right to expect that their employees will perform work during working hours at the work place, particularly when requested specifically to do so by a supervisor. Refusal to do so is disruptive of the orderly operation of the work place, which the Court of Special Appeals has recently noted as an important interest of Maryland employers. Department of Employment v. Owens, 541 A.2d 1324 at 1327 (1988).

Appellant argues that to "ask" someone to do something is not an "order" (Appellant's Memorandum, p. 11). The Board, who is charged with applying the facts of each case to the Maryland Unemployment Insurance Law, stated specifically in their decision that:

There is no requirement (nor should there be) that the order must be stated in a nasty tone in order for an employee's refusal to be considered insubordination, and gross misconduct under the Unemployment Insurance Law (R. 231).

It is not for the Appellant nor his attorney nor this Court to make the judgment required in each case, on its own facts, to determine whether specific conduct falls within the statutory definition of gross misconduct. The Board has been designated by the General Assembly to apply the Maryland Unemployment Insurance Law to the facts of each case. The appellate courts in Maryland have repeatedly held that it is within the province of the Board to resolve conflicting evidence and, where inconsistent inferences from the same evidence can be drawn, it is for the Board to draw the inference. Baltimore Lutheran, 302 Md. at 663, 490 A.2d at 708. A question of fact exists where conflicting inferences can be drawn from undisputed facts. Id. Even if the conflicting inferences go to the ultimate question (i.e., whether there was "good cause" or "voluntary quit" or, as here, "gross misconduct"), that does not make the question before the reviewing court a question of law. Paynter, 303 Md. at 39, 491 A.2d at 1194, 1195.

The reviewing court may substitute its judgment on the law for that of the agency if and only if the factual findings made by the agency and supported by substantial evidence are susceptible of but one legal conclusion. Ramsey v. Scarlett & Co., Inc. v. Comptroller of the

Treasury, 302 Md. 825, 490 A.2d 1296 (1985).³ Where there may be differing views - not as to the law governing the case - but rather as to its proper application to the established evidence of record, the reviewing court must defer to the agency's view. Id. at 837, 490 A.2d at 1302. Because the facts of this case are susceptible of more than one legal conclusion and because the conclusion reached by the Board is reasonable, the reviewing court must yield to the expertise of the agency in applying the law to the facts.

Under the analysis of Paynter and Ramsey, Scarlett, the Board in the instant case made no error of law. The Board approached the issue in the light of the applicable statute, Art. 95A, Sec. 6(b) and recognized the relevant criteria prescribed in the statute: "deliberate and willful behavior" in disregard of the "employer's interest". The Board applied these precepts to Ms. Poindexter's version of the facts and concluded that she was disqualified under Sec. 6(b).

What conduct rises to the level of disqualifying gross misconduct is a mixed question of law and fact. The issue

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Although Ramsey, Scarlett involved an accounting issue in a tax case under Maryland Annotated Code, Art. 81, the standard of judicial review in Sec. 229(o) of decisions of the Tax Court is the same as that in unemployment insurance cases. Even the technical tax issue in Ramsey, Scarlett was held not to be solely a question of law that involved no agency expertise and that would justify a substitution of judgment standard of appellate review.

of the "reasonableness" of employers' expectations, of "deliberateness" and "willfulness" of conduct, of what "standard of behavior" a Maryland employer has the "right" to expect, and of the type of conduct that shows a "gross indifference" to the "interest" of an employer are all factual, labor-related issues that are within the particular expertise of the Board.

The Board's conclusion that conduct such as Ms. Poindexter's need not be tolerated by Maryland employers and will not be subsidized by the award of benefits is well supported by the decisions of courts in other jurisdictions that have similar statutes.

Courts in other jurisdictions, having similar statutes, support the Board's conclusion. An employee who is fired for failure to follow reasonable orders given by a supervisor is not eligible for unemployment insurance benefits. Dearolf v. Commonwealth, 59 Pa. Cmwlth. 493, 429 A.2d 1284 (1984); Tisak v. Commonwealth, 56 Pa. Cmwlth. 399, 424 A.2d 635 (1981). Insubordination, according to the Pennsylvania court, constitutes "willful misconduct", which is defined the same as gross misconduct in the Maryland statute. Tisak, 424 A.2d at 635.

Reviewing courts are reluctant to second guess administrators in areas

. . . especially within the expertise of the administrative officials administering the unemployment insurance law, involving as it does many subtle considerations and nuances of fact which need evaluation. It would be the rare case indeed which would

justify a court disturbing that administrative determination. . . .
Barley v. Department of Employment Security, 242 Md. 102, 106, 218 A.2d 24, 27 (1966).

The testimonial and documentary evidence produced by the employer and by the Appellant provides substantial evidence that supports the decision of the Board. As the Court of Appeals recently emphasized, the question before the reviewing court in unemployment insurance cases is whether there is substantial evidence to support the Board's decision. Paynter, 303 Md. at 36, 491 A.2d at 1195. It is irrelevant that there may also be substantial evidence in the record from which the converse conclusion might reasonably be drawn.

The conduct revealed by this record is precisely within the terms of Sec. 6(b). The reviewing court, honoring the expertise of the Agency, must review the Board's determination in the light most favorable to the Agency (the Agency's decision is prima facie correct and carries the presumption of validity), and the decision of the Board must be left undisturbed in the absence of an error of law. Baltimore Lutheran High School Association, Inc., 302 Md. at 663, 664, 490 A.2d at 708.

What constitutes "gross misconduct" as used in Sec. 6(b) is not solely a question of law. Sections 6(b) and 7(h) indicate the clear legislative intent to commit to the Department of Economic and Employment Development the administrative function of deciding on the facts of each

case what constitutes gross misconduct in the light of its expertise in the field.

The testimony at the hearing was in conflict. The Board clearly resolved that conflict in favor of the employer. Credibility determinations made by the Board are binding on the reviewing Court and even where reversing their own Hearing Examiner and when merely reviewing the record. Board of Appeals, Department of Economic and Employment Development 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).

The Board made no error of law. The issue was approached in light of the applicable statute, Sec. 6(b). The Board recognized the relevant statutory criteria for disqualification, namely, that the conduct was deliberate and willful and showed a gross indifference to the employer's interests. The Board comprehended the legal substance of the appropriate test and did not misapply its precepts to the facts. The Board was not erroneous in the conclusion that Ms. Poindexter's conduct constituted gross misconduct.

Unemployment insurance benefits are intended for those who are not responsible for their own unemployment. Under the Maryland Unemployment Insurance Law, a former employer, through his tax contributions, is asked to bear the financial burden of his former employee's unemployment when the employer bears responsibility for creating the

unemployment. The general scheme is for benefits to be provided for those who quit their jobs due to intolerable conditions or those who are laid off due to lack of work. Section 6. Such is not the case here. In the instant case, the employer does not bear responsibility for Ms. Poindexter's unemployment.

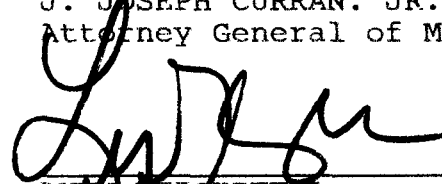
Unemployment insurance benefits are intended for persons who are unemployed through no fault of their own. Section 2. In the present case, it was Ms. Poindexter's own insubordination that led to her discharge. Thus, she is not one that the statute was designed to compensate. The Board acted properly in disqualifying her from the receipt of benefits.

IV. Conclusion

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

Respectfully submitted,

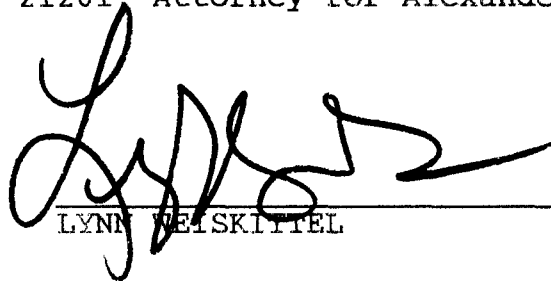
J. JOSEPH CURRAN, JR.
Attorney General of Maryland



LYNN WEISKITTEL
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217 E. Redwood Street
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Baltimore, Maryland 21202
(301) 333-6943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 1990, a copy of the foregoing Memorandum in Support of the Board of Appeals was mailed, postage prepaid, to George A. Epstein, Esquire, 110 E. Lexington Street, Baltimore, Maryland 21202, Attorney for Appellant; and to Steven D. Frenkel, Esquire, Semmes, Bowen & Semmes, 250 W. Pratt Street, Baltimore, Maryland 21201, Attorney for Alexander & Alexander, Inc.



LYNN WEISKITTEL

VICKI L. JEFFERSON POINDEXTER	*	IN THE	FILED
Appellant	*	CIRCUIT COURT	AUG 23 1989
vs.	*	FOR	CIRCUIT COURT FOR BALTIMORE CITY
ALEXANDER and ALEXANDER, INC.	*	BALTIMORE CITY	
Employer	*	Case #:	90164037/CL115008
* * * * *			

MEMORANDUM IN SUPPORT OF APPEAL

VICKI L. JEFFERSON POINDEXTER, Appellant, by her attorneys, GEORGE A. EPSTEIN and ROCHLIN & SETTLEMAN, P.A., pursuant to Maryland Rule B12, submits this Memorandum in support of her Appeal from the Board of Appeals of the Maryland Department of Economic and Employment Development.

STATEMENT OF THE CASE

On May 30, 1989, Appellant was discharged from her employment as a word processor with Alexander & Alexander, Inc. ("Employer"). She then filed a claim for unemployment compensation. On June 12, 1989, a claims examiner of the Department of Economic and Employment Development determined that she had been discharged for misconduct, not amounting to gross misconduct, in connection with the work, and imposed a period of disqualification from receiving benefits. (R1-5.)

Appellant filed a timely request for an appeal (R7), and a hearing was held before a hearing examiner (the tape recording of the testimony adduced at this hearing has been lost (R9a).) The hearing examiner subsequently issued a decision, dated August

WJ

4, 1989, finding that Appellant had not committed misconduct or gross misconduct and accordingly reversing the decision of the claims examiner (R13-15).

Employer then noted an appeal to the Board of Appeals ("Board") (R16), which was unable to review the case due to the lack of a record and therefore remanded the case for a new hearing (R34). That hearing was held before a different hearing examiner, who issued a decision, dated March 7, 1990, in which Appellant again was found not to have committed misconduct or gross misconduct (R209-212).

Employer again noted an appeal to the Board (R213-215). On May 14, 1990, without holding a hearing, the Board issued a decision finding that Appellant had been discharged for gross misconduct in connection with the work and reversing the decision of the hearing examiner. The decision imposed on Appellant a total disqualification from receiving benefits in connection with her discharge by Employer. (R230-232.) Appellant then timely noted the instant appeal to this Court.

STATEMENT OF FACTS

Initially, it should be noted that the Board's decision addressed only certain events that occurred on May 26, 1989. Although much of the testimony taken at the second hearing (the only hearing transcribed in the record, due to the loss of the tape recording of the first hearing) concerned events that

occurred prior to May 26, 1989, the Board evidently considered that testimony largely irrelevant, and did not refer to any of it in making its findings of fact (R231). The Board found that Appellant's discharge was a direct result of the events of May 26, 1989. (Id.) Under Article 95A, Section 7(h) of the Annotated Code of Maryland, this Court's review is limited to the evidentiary basis for the Board's findings of fact and the correctness of the legal conclusions reached by the Board. Accordingly, the facts set forth herein concern only the events of May 26, 1989.

It should also be noted that, although there were some conflicts in the testimony concerning crucial events of May 26, 1989, the Board made no attempt to resolve these conflicts. Instead, the Board accepted arguendo the evidence presented by Appellant. (Id.) (Both of the hearing examiners had made findings of fact indicating that they had resolved the conflicts in favor of Appellant (R13-14, 210).) The jurisdiction of this Court is limited under Article 95A, Section 7(h) to questions of law; this Court may not substitute its judgment concerning facts for that of the Board, but must only determine whether a reasoning mind could have reached the same conclusion as the Board. Department of Employment v. Owens, 541 A2d. 1324, 1327-28 (Md. App. 1988). Therefore, this Court is prohibited from attempting to resolve the conflicts in the evidence, and has no alternative but to follow the course adopted by the Board, i.e., to accept arguendo the

evidence presented by Appellant. Accordingly, only that evidence is summarized herein.

On the morning of May 26, 1989, Appellant was standing by the desk of a co-worker, Greg Powell, whose work station was located next to hers. She and Mr. Powell were having a conversation which had initially concerned work related matters, but then became more social in nature. (R58, 166-68, 174.) She was approached by her supervisor, Sandy Vernago, who asked her to go back to work. Appellant testified that she told Ms. Vernago that she could do so, but that she then went on to explain that she felt she was being treated unfairly because other employees also were talking and not working (R111). Mr. Powell testified that Appellant responded that she would go back to work when the other employees went back to work (R169).

According to Appellant's testimony, Ms. Vernago then asked Appellant to come into the office of Pam Sober, the manager of the word processing department, who was not working that day, to continue the conversation (R111). Mr. Powell testified that Ms. Vernago asked Appellant, "Would you like to continue the discussion in Pam's office." (R169.) This request was made in a calm, conversational tone of voice (R61-62, 169-70). Appellant responded that she did not want to continue the conversation (R111, 169). Ms. Vernago then turned and walked away and Appellant returned to her desk and resumed work. (R112, 170).

Moments later, Ms. Vernago walked back toward Appellant. According to Mr. Powell, Ms. Vernago then asked Appellant again to come into the office. This request also was made in a normal tone of voice, and Mr. Powell testified that Appellant might not have been able to hear it (R171, 182-83). Appellant's testimony would indicate that she did in fact not hear this second request (R113), and she did not respond to it (R170-71). Ms. Vernago then told Appellant to come into the office (R113, 171). This command was made in a demanding or angry tone of voice (R114). Appellant then went into Ms. Sober's office with Ms. Vernago (R113, 171). Ms. Vernago and Appellant discussed the situation (R114-15). Following the conversation, Appellant returned to work (R115). On the following work day, Ms. Sober advised Appellant that her employment was being terminated because of the events of May 26, 1989 (R95-96).

QUESTIONS PRESENTED

1. Did Appellant's alleged insubordination constitute gross misconduct?
2. Is the Board's factual finding that Appellant was insubordinate supported by substantial evidence?

ARGUMENT

I. UNDER THE CIRCUMSTANCES OF THIS CASE, APPELLANT'S ALLEGED INSUBORDINATION DID NOT CONSTITUTE GROSS MISCONDUCT.

"Gross misconduct" is defined in Article 95A, Section 6(b) of the Annotated Code of Maryland as:

[C]onduct of an employee which is (1) a deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interest, or (2) a series of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations. Misconduct not falling within this definition shall not be considered gross misconduct.

Since the Board based its decision entirely on events that occurred within a period of a few minutes on one particular day, Appellant's alleged insubordination in this case clearly does not constitute "a series of repeated violations of employment rules", and the second branch of this definition of "gross misconduct" does not apply. This alleged insubordination therefore must be measured against the standards of the first branch of the definition: "a deliberate and willful disregard of standards of behavior, which [her] employer [had] a right to expect, showing a gross indifference to the employer's interest."

In its decision, the Board stated categorically that "an employee's refusal to obey an order of her supervisor is gross misconduct." (R231.) This "bright line" interpretation of the law finds no support in the reported decisions construing the definition of gross misconduct under Article 95A, Section 6(b).

In Employment Security Board of Maryland v. LeCates, 145 A2d. 840 (Md. 1958), the Court of Appeals considered the issue of

what constitutes "deliberate and willful" misconduct. (Although the statutory definition of disqualifying misconduct has been changed somewhat since the decision in LeCates, the requirement that such misconduct must be "deliberate and willful" remains, and the LeCates decision continues to be viable. Watkins v. Employment Security Administration, 292 A2d. 653, 655 (Md. 1972).) The LeCates court, quoting a law review commentator, noted that "we 'are not looking simply for substandard conduct...but for a wilful or wanton state of mind accompanying the engaging in substandard conduct.'" Id. at 844.

Further, the Court stated, "Ordinarily a single instance of misconduct would not bring an employee within the disqualifying terms of [the statute]. The important element to be considered is the nature of the misconduct and how seriously it effects the claimant's employment or the employee's rights. Obviously no hard and fast rule can be made to cover such a situation." Id. (emphasis supplied).

In contrast to the categorical approach taken by the Board that insubordination automatically constitutes gross misconduct, the Court stated, quoting the same law review commentator, that "'[t]urning from the requisite state of mind to the type of act or failure to act necessary for "misconduct" we are necessarily thrown into a shifting framework of reference.... [T]he "wrongness" of the conduct must be judged in the particular

employment context." Id. (emphasis supplied). See also Department of Employment v. Owens, 541 A2d. 1324 (Md. App. 1988); Painter v. Department of Employment and Training, 511 A2d. 585 (Md. App. 1986).

No reported Maryland decision has been located dealing with the issue of whether a single instance of insubordination can ever constitute gross misconduct. In fact, it appears that no reported Maryland decision has ever held that insubordination of any kind can constitute gross misconduct. It is instructive, however, to compare Appellant's alleged insubordination with the kinds of conduct that the Courts have held do rise to the level of gross misconduct.

For example, the claimant in LeCates, supra, gained unauthorized access to a portion of his employer's premises by abusing a privilege that the claimant enjoyed as a supervisor, and then took without authorization a truck belonging to his employer. He then "operated the truck without an operator's license, caused it to be involved in an accident, left the scene without identifying himself, and failed to report the accident for more than two days." Id. at 845.

The claimant in Watkins, supra, was chronically absent or late over a period of years despite repeated warnings. The claimant in Painter, supra, while on a period of medical leave, deliberately misled her employer by concealing for months the fact

that she had been cleared to return to work. Finally, the claimant in Owens, supra, threatened to kill his employer and then took action apparently calculated to result in the threat being carried out.

The alleged "insubordination" committed by Appellant bears little resemblance to these kinds of conduct. The entire incident involved in this case was a completely isolated occurrence that was not part of any pattern of behavior. After being asked to return to work, Appellant told her supervisor that she would do so when her co-workers did. She communicated to her supervisor her belief that she was being treated unfairly. She then declined her supervisor's request to continue the conversation in a private office; instead Appellant returned to her desk and resumed work. When she heard her supervisor's unequivocal directive to come into the private office, Appellant immediately did so. At no time did she verbally abuse her supervisor, attempt to humiliate her supervisor in front of the entire office, or create a scene. Assuming arguendo that substantial evidence supports the Board's finding that Appellant's conduct in each instance amounted to a refusal of a direct order by a supervisor, Appellant did nothing that could be considered "willful" disregard of any reasonable standards of behavior, nor did her conduct in any way show "a gross indifference to the employer's interest." Her alleged insubordination did not amount to gross misconduct.

II. THE BOARD'S FACTUAL FINDING THAT APPELLANT WAS INSUBORDINATE IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

In its decision, the Board states that Appellant's "supervisor came over and told her to go back to work. She did not make a move to return to her desk, but instead stated that she was being treated unfairly because others in the office were talking and were not being told to stop." Clearly, this finding is supported by substantial evidence.

What are not supported by any evidence are the Board's conclusions based on these facts: that "[t]his response was a refusal of a direct order by her supervisor" and that Appellant was thus insubordinate. What is really involved here is not a fact finding exercise; it is an exercise in logic. All Appellant was doing was voicing, in a calm and reasonable fashion, her belief that she was being treated unfairly. She was not refusing to return to work; she was simply stating her opinion as to the situation. This is unmistakably shown by the fact that within seconds, as soon as Ms. Vernago started to walk away, Appellant in fact did return to her desk and resume work.

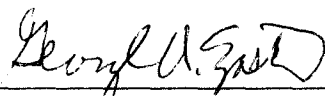
Similarly, substantial evidence clearly supports the Board's finding that "[t]he supervisor then "asked" the claimant to come into the private office of another supervisor, to continue their discussion; again the Claimant refused." Again, however, the Board's finding that "[t]his too is a refusal of the super-

visor's order" defies logic. To "ask" someone to do something simply is not the same thing as to "order" her to do it. The Board may find this argument "totally ludicrous" (although it is interesting that both of the department's hearing examiners accepted this argument), but it is a simple truth. Appellant was at no time insubordinate; the Board's finding to the contrary is clearly erroneous. She not only committed no gross misconduct; she committed no misconduct at all.

CONCLUSION

For the reasons stated, Appellant respectfully requests that the decision of the Board of Appeals in this matter be reversed, and that the matter be remanded to the Board for the entry of an order that Appellant is not subject to any period of disqualification from receiving benefits.

ROCHLIN & SETTLEMAN, P.A.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 23rd day of August, 1990,
that a copy of the foregoing Memorandum in Support of Appeal was
mailed, postage pre-paid, to Amy S. Scherr, Esquire, Assistant
Attorney General, 217 East Redwood Street, 11th Floor, Baltimore,
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& Semmes, 250 West Pratt Street, Baltimore, Maryland 21201.



GEORGE A. EPSTEIN

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

VICKI L. JEFFERSON POINDEXTER

Docket:

vs.

ALEXANDER & ALEXANDER, INC., ETAL

Folio:

File: 90164037/CLL15008

Date of Notice: 7/27/90

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 25TH day of JULY

Nineteen Hundred and NINETY, I received from the Administrative

Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

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VICKI L. JEFFERSON POINDEXTER

vs.

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SAUNDRA E. BANKS, Clerk

Circuit Court for Baltimore City

CC-39

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STATE OF MARYLAND
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

July 26, 1990

Vicki Jefferson Poindexter
c/o George A. Epstein Esquire
Rochlin & Settleman, P.A.
110 East Lexington Street
Baltimore, MD 21202

Re: #90164037/CL115008

Dear Ms. Poindexter:

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
Steven D. Frenkil, Esquire

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.)

VICKI L. JEFFERSON POINDEXTER

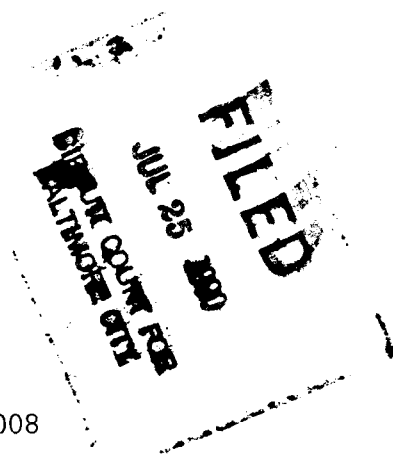
vs.

ALEXANDER & ALEXANDER, INC.

and

BOARD OF APPEALS
Department of Economic and
Employment Development

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* #90164037/CL115008
*
*



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

FILED
JUL 25 1990
CIRCUIT COURT FOR
BALTIMORE CITY

VICKI L. JEFFERSON POINDEXTER	:	RECORD BEFORE THE
vs.	:	DEPARTMENT OF
ALEXANDER & ALEXANDER, INC.	:	ECONOMIC AND EMPLOYMENT
and	:	DEVELOPMENT
BOARD OF APPEALS	:	APPEAL NO. 8908242
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 23rd day July, 1990.

STATE OF MARYLAND
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT

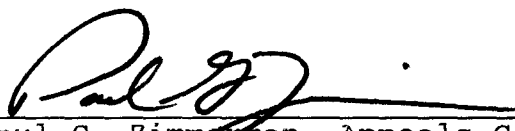
BY: 
Paul G. Zimmerman, Appeals Counsel
BOARD OF APPEALS

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

RECEIVED

FACT FINDING REPORT

JUL 20 1990

Date Conducted 6-12-89
Claimant's Name Vicki Jefferson
Social Security Number 216-96-1356
Issue: Discharge or Suspension From Work

- Unresolved Issue (H02)
 Create and Resolve Issue (H03)
 Redetermination/Corrected Determination (H05)

OFFICE OF THE
ASSISTANT ATTORNEYS GENERAL

CLAIMANT'S STATEMENT

Claimant present? YES NO If no, how contacted?
Name of employer: Alexander + Alexander
FDW: 10589 LDW: 5-30-89 Rate of Pay: 14.965 Name of immediate supervisor: Sandy Vernago
Name and title of person who notified you of your discharge: Van Sabers
What reason were you given for your discharge? I was discharged for insubordination. I was talking on the floor with other employees on 5-30-89. Sandy Vernago told me to stop talking and get back to work. Other employees were talking as well, but I wasn't given the opportunity to explain my side.

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 If no, explain:
Additional information: Nothing was ever said to them. I told her the supervisor I felt I was being singled out because it wasn't the only one talking. I was called into the office and Sandy Vernago stated everyone was minding everyone else's business in the office. After this discussion I thought things were straightened out. On 5-30-89 I was called into the office and terminated. Van Sabers conducted the exit interview, he would not let me discuss the issue. Van Sabers told me to tell personnel I was a word processor.

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

CLAIMANT'S REBUTTAL: Not necessary.

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 Vicki S. Jefferson

01

FACT FINDING REPORT

EMPLOYER'S STATEMENT

Name of employer/company: Alexander & Alexander Employer present? YES NO
Separation notice received: 6-12-89 207 Employer letter Other
LDW: 5-30-89 Reason for separation from above: _____

Employer contacted by phone? YES NO Telephone Number: 301-547-2800
Name of company officer: James Kramer Position/title: Personnel Mgr
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: Insubordination

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:

Chit was not sitting at her desk working on 5-26-89, supervisor requested she go back to appropriate work station & Chit refused. Chit had been using the telephone on toll phone 8:45am-10:55am. Supervisor asked Chit to go into her office for a conference. Chit finally agreed to go on 5/30/89. Rate 14.936 FD 10-5-89 A LDW 5/30/89 \$7.111/huf

If the reason for discharge was absenteeism or lateness:

Number of days absent: _____ Dates: NA.
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: Chit was terminated for insubordination. She, Chit, however, has never given any written or verbal warnings prior to this incident.

BENEFIT DETERMINATION

SSN 216 96 1356 0 Name Check JKF
Sequence Number: 03 Issue Code 510 Program: 0 Java:
Resolution Code: 510 Penalty? N Count? 4 Time Lapse:
Statement Number: 05011 Text Date: _____ Examiner ID: 45557
Employer Number: 00570001 Non-Charge? N Non-Charge Start Date: _____
Start Date: 052889 Disq. Weeks: 05 OP Source: OP Fault:

Redet/Corr. Det. Reason:
Date Completed: 6-72-89 Claims Examiner: [Signature]

Vicki L. Jefferson
8408 Maymeadow Court
Baltimore, MD 21207
June 5, 1989

Alexander & Alexander, Inc.
100 Light Street
Baltimore, MD 21202

To whom it may concern:

I, Vicki L. Jefferson was told by your supervisor, Pam Sober on May 30, 1989 that I was terminated effective at 10:00 a.m. on information received from Sandy Vernago that I was talking while doing my work on May 26, 1989 to another employee. I feel that I have been treated unfairly and unjust, also discriminated against because of the action of these individuals.

It is my understanding that company policy does not restrict conversation in the work place, it being necessary tools of communication process.

I was the only person given such harsh treatment, when others were involved in conversation also.

The First Amendment give the right of free speech.

I was not given any documentation of termination or the opportunity to defend myself. Therefore, if I don't hear from you in (5) five days from receipt of this letter, I will assume the oral termination is null and void and I will return to work immediately.

Thanking you in advance for your response.

Sincerely yours,

Vicki L. Jefferson
Vicki L. Jefferson

08

Alexander & Alexander Inc.
100 Light Street
Baltimore, Maryland 21202
Telephone 301 547-2800
TWX 710-234-1059



June 6, 1989

Ms. Vicki L. Jefferson
8408 Maymeadow Court
Baltimore, MD 21207

Dear Ms. Jefferson:

We received your letter dated June 5, 1989 and wish to advise you of the following:

- ° The facts stated in your letter are not accurate.
- ° Do not return to this office, there is no position available for you.
- ° Should you return you will be required to leave the building.

A handwritten signature in cursive script, appearing to read "Jane L. Kramer".

Alexander & Alexander
Jane L. Kramer
Human Resources Manager

JLK/cg

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
 OFFICE OF UNEMPLOYMENT INSURANCE
 STATE OF MARYLAND P.O. BOX 17153 BALTIMORE, MARYLAND 21203

REQUEST FOR SEPARATION INFORMATION

RETURN TO LOCAL OFFICE

01-21-V469

The claimant whose name is shown below has filed a claim for Unemployment Insurance Benefits. Our records indicate that the claimant worked for you. Please answer the questions below, sign and mail one copy of this form in the enclosed envelope by the due date. A penalty of \$15 will be assessed if this form is returned late. NOTE: The law provides penalties for false statements.

SOCIAL SECURITY NO. 216-96-1356	EMPLOYEE'S INITIALS AND LAST NAME V L JEFFERSON	EMPLOYER ACCOUNT NO. 00570001	EFFECTIVE DATE OF CLAIM 05/28/89	RUN DATE 06/02/89	DUE DATE 06/12/89
---	---	---	--	-----------------------------	-----------------------------

REASON FOR SEPARATION

- 1. LAYOFF (10 WEEKS OR LESS) (97) EXPECTED DATE OF RETURN _____
- 2. LACK OF WORK (99)
- 4. DISCHARGED (50)
- 6. SCHOOL VACATION (22) Does claimant have a written, verbal or implied understanding that he/she will be returning to substantially the same or a better position when school resumes? Yes ___ No ___

- 3. QUIT (30)
- 5. VACATION SHUT DOWN (28) START DATE _____

- 7. LABOR DISPUTE
- 9. OTHER

CLAIMANT'S FIRST DAY OF WORK			CLAIMANT'S LAST DAY OF WORK		
MO	DAY	YR.	MO	DAY	YR.
10	05	87	5	30	89

APPLICABLE TO WAGE TRANSFER
 YOUR FORMER EMPLOYEE HAS FILED A CLAIM FOR UI BENEFITS IN ANOTHER STATE AS A RESULT, WAGES ARE BEING TRANSFERRED OUT-OF-STATE. MD HAS NO JURISDICTION OVER THIS CLAIM. YOUR ACCOUNT MAY BE CHARGED FOR BENEFITS PAID.

NOTE: If the separation information which you give on this notice differs substantially from that given by our former employee, you may be requested to attend a Pre-termination or Pre-termination Hearing for the purpose of resolving this dispute. The decision rendered may result in charges to your account for benefits paid the claimant.

RECEIVED
 NORTHWEST LOCAL OFFICE
 JUN 14 1989

IF REASON IS 3, 4, 8, 9 PLEASE EXPLAIN IN DETAIL ON THE BACK OF THIS FORM IT MAY RESULT IN RELIEF OF BENEFIT CHARGES, IF ALLOWED UNDER THE LAW

FOR ANY PERIOD SINCE THE LAST DAY WORKED, HAS THE CLAIMANT RECEIVED, OR WILL HE/SHE RECEIVE:

1. PENSION OR ANY OTHER RETIREMENT PAYMENT? PER MONTH \$ _____ EFFECTIVE DATE _____ LUMP SUM \$ _____ DATE PAID _____	4. SEVERANCE PAY \$ _____ DATE PAID _____
2. PROFIT SHARING AMT. \$ _____ DATE PAID _____	5. VACATION PAY \$ _____ DATE PAID _____
3. BONUS OR SPECIAL PAYMENT \$ _____ DATE PAID _____	6. HOLIDAY PAY \$ _____ DATE PAID _____

CLAIMANT'S WEEKLY WAGE \$ 574.47	CLAIMANT'S HOURLY RATE \$ 8.206	DID THE CLAIMANT WORK ALL AVAILABLE HOURS DURING THE CALENDAR WEEK WHICH INCLUDES THE LAST DAY OF WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF NO, EXPLAIN: _____
TRADE NAME OF EMPLOYER _____		ENTER THE AMOUNT OF THE CLAIMANT'S EARNINGS FOR THE CALENDAR WEEK WHICH INCLUDES THE LAST DAY OF WORK \$ 248.92
SIGNATURE OF OFFICIAL _____		NOTE: CALENDAR WEEK BEGINS SUNDAY, ENDS SATURDAY

SIGNATURE OF OFFICIAL: **D. BANZ** TITLE: **PAYROLL MANAGER**
 DATE: **6/12/89** TELEPHONE NO.: **(301) 363-5156**

EMPLOYER
ALEXANDER ALEXANDER INC
HARPTON PLAZA
300 E. JOPPA RD.
BALTIMORE, MD 21204-0000
 RETURN TO LOCAL OFFICE # **45**
DEED/OFFICE OF UNEMPLOYMENT INS.
NORTHWEST LOCAL OFFICE
4025 MORTIMER AVENUE
BALTIMORE, MD 21215

*SEE LOCAL OFFICE INFORMATION ON REVERSE SIDE

DA

NOTICE TO APPEALS DIVISION OF LOWER APPEAL

SSN: 216 96 1356 DATE RECEIVED/TAKEN BY LO: 07/06/89 ENTRY DATE: 07/06/89

LO: 45 PROGRAM TYPE: 00 BYB: 05/28/89 SPECIALIST ID: 45557

DATE OF APPEAL: 07/06/89 APPEAL DEADLINE: 07/12/89 TIMELY APPEAL? Y

LATE APPEAL REASON:

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

ISSUE: DISCHARGED FROM EMPLOYMENT WBA: \$191.00

COMMENTS:

CLAIMANT: VICKI L JEFFERSON (Poindexter) TELEPHONE: 301 521 2821
ADDRESS: 8408 MAYMEADOW COURT

BALTIMORE MD 21207

08212

EMPLOYER: ALEXANDER ALEXANDER INC TELEPHONE:
ADDRESS: HAMPTON PLAZA
300 E JOPPA RD
BALTIMORE MD 21204-0000

APPELLANT REPRESENTATIVE:
REPRESENTATIVE ADDRESS:
REPRESENTATIVE TELEPHONE:

BENEFIT DETERMINATION

THE CLAIMANT WAS DISCHARGED BY ALEXANDER AND ALEXANDER ON 5-30-89, BECAUSE OF INSUBORDINATION. THE INFORMATION PRESENTED DOES NOT SHOW THAT THE CLAIMANT'S ACTIONS AMOUNTED TO GROSS MISCONDUCT. 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 05/28/89 AND FOR THE 04 WEEKS ENDING 07/01/89
- () 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 TOTALLING WHICH MUST BE REPAYED.

STATE OF MARYLAND
DEPARTMENT OF EMPLOYMENT AND TRAINING
UNEMPLOYMENT INSURANCE ADMINISTRATION

REQUEST FOR APPEAL HEARING

I wish to appeal the determination dated 6 27 89 written under section 6(f) of the law because I disagree with the previous final decision.

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.

Vicki L. Jefferson 216-96-1356
Claimant's Signature Social Security Number
[Signature] 7/6/89
Witness Date

REQUEST FOR LOWER APPEAL (101)

SSN 216 96 1356 0 Name Check U JEF

New Address _____

_____ CITY STATE ZIP CODE

Date of Appeal 070689 Late Appeal? W

Late Appeal Reason _____

Type of Appeal 1 Appellant Code 1 Resolution Code 50

Sequence Number 03 Multiple Appeals? W

Comments _____

Date appeal forwarded to Appeals Division _____

Appellant Representative _____

Representative Address _____

_____ CITY STATE ZIP CODE

Representative Phone _____

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

06

Vicki Jefferson
8408 Maymeadow Court
Baltimore, Md 2120

July 2, 1989

~~SS# 21696 1357~~

Case #
4555

To The Maryland
Dept of Economic and
Employment Insurance
1100 North Eutaw Street
Baltimore, Md 21201

Please be advised, I Vicki L. Jefferson do request an appeal to the Administrative Judge of the Unemployment Insurance Division, in the above Caption Case. In my opinion I constituted no misconduct under Rule 95A of the Unemployment Act, Section (b)(c), as claimed by the State of Maryland, Dept of Unemployment.

This request has been filed in a timely fashion under the Rule of the unemployment Insurance Act.

05
Yours Truly,

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.
<i>(Pindex)</i> VICKI L. JEFFERSON	ALEXANDER ALEXANDER INC.	07/14/89	89DB242	216-96-1356

Appellant: CLAIMANT

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on JULY 25 1989 at 9:30 A.M. EDT (Please be on time)
JULY (TWENTY FIFTH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 ROFTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:
JUDY-LYNN GOLDENBERG

Mail To:

VICKI L. JEFFERSON
8406 MAYMEADOW COURT
BALTIMORE, MD 21207

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.)

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.

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.
WICKI L. JEFFERSON	ALEXANDER ALEXANDER, INC.	07/14/89	HS08242	21c-96-1358

Appellant: CLAIMANT

Local Office No. 145

A hearing on this appeal will be held before the Hearing Examiner on JULY, 25 1989 at 09:30 A.M. EDT (Please be on time)
JULY, (TWENTY FIFTH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

JUDY-LYNN GOLDENBERG

Mail To:

ALEXANDER ALEXANDER, INC.
HAMPTON PLAZA
300 E. JOPPA ROAD
BALTIMORE, MD 21204

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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.

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.

NOTE

The cassette containing the testimony adduced before
the Hearing Examiner on July 25, 1989 has been lost.

MEMORANDUM

April 6, 1989

TO: Vicki Jefferson

FROM: Pam Sober
Manager, Word Processing

RE: Your Letter - Undated

I would like to respond to your letter addressed to "Ladies, Personnel Department and my Immediate Supervisors, Ms. Pam Sober, Ms. Sandy Vernago and Ms. Rita Johnson".

First of all, A&A did not become aware of your medical condition until December 11, 1987 when you suffered a diabetic coma.

Second, Jane Kramer and I met with you to discuss possible changes that would accommodate your illness while minimizing the disruption to the work place caused by your frequent and unpredictable tardiness and absences. For example, we offered to change your shift presently at 7:00 a.m. - 2:30 p.m. to 8:45 a.m. - 4:45 p.m. We hoped that this change would minimize the disruption to the office caused by you not showing-up for work until after 9:00 a.m. As you know, we rely on the people who have chosen to come to work at 7:00 a.m. in that it permits considerable work to be performed before the normal work day begins at 8:45 a.m. You rejected our offer stating that you needed your fiance to wake you up in the morning before he left for work and that a later reporting time for you would not accommodate that arrangement.

The next issue that we addressed is your request that we continue to pay you for sick days in excess of the eight (8) paid sick days allowed annually for each employee. We cannot grant your request as we must treat all of our employees the same. Furthermore, we told you that A&A does have a medical disability program for which you may qualify. To this end, I have attached a copy of that policy and a request form.

Patti Klosek and I gave your doctor a call this morning (copy of release attached) to find out if he had any ideas of reasonable accommodations we could make for you. Dr. Khouzami told us that once you have passed 14 weeks of your pregnancy, these diabetic comas should not happen anymore. On Monday, when you had to be taken to the hospital by the paramedics, you were already past 14 weeks. Dr. Khouzami told us that he has explained to you that "missing your meals by as little as a half-hour can cause these reactions. Vicki told me I don't have time to eat when I'm supposed to." I have told you on numerous occasions that you can eat at any time while you are working at your desk. Dr. Khouzami told us "she's missed many appointments,

MEMORANDUM

TO: Vicki Jefferson
RE: Your Letter - Undated

and I've told her that she can't miss anymore. She told me she can't get a ride to my office in the evenings." Vicki, you get off work at 2:30 p.m. and the doctor told us that he has office hours one night a week until 6:00 p.m. He also told us that at 32 weeks of your pregnancy, you will have to come once a week in the morning for a stress test and other tests. Since we know that you will be coming to work late for these appointments at 32 weeks, we will not allow you to come in late or leave early for your regular doctor appointments before this time. Dr. Khouzami said, "I've talked to Vicki many times the and the bottom line is Vicki wants to do what Vicki wants to do. I don't have any other suggestions for you to accommodate Vicki."

Please advise us of any other reasonable efforts we may make to accommodate your illness. However, please remember that any such accommodation must enable the word processing unit to operate with a minimum of disruption. To this end, our employees are expected to report to work on time; and continued tardiness or absences will result in termination.

Pamela F. Sober 4/6/89
Pamela F. Sober Date

Vicki Jefferson 4/6/89
Vicki Jefferson Date

Attachment

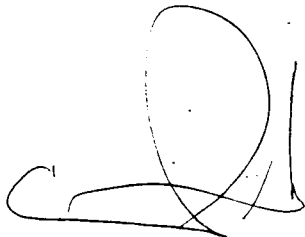
July 20, 1989

To Whom It May Concern:

I, Gregory Powell, do certify the following to be a true and accurate account, to the best of my knowledge, of events pertaining to an incident between Vicki Jefferson and Sandy Vernago on May 26, 1989.

On May 26, 1989, somewhere between 10:00 and 11:00 A.M. Vicki was standing at my desk talking to me when Sandy came around to my desk and asked Vicki if she could do some work. Vicki said, "Yes, I can" and Sandy asked Vicki to do some work then. Vicki asked Sandy how she could tell Vicki to get back to work when everyone else on the other side of the room was talking and not working either. Sandy told Vicki not to worry about everybody else and then asked Vicki if she would like to continue this discussion in her office.* Vicki said "No, I would not". Vicki then went back to her desk and started working. Sandy went into her office and then came back out and asked Vicki to come into her office. Vicki got up from her desk and went in Sandy's office and Sandy closed the door. Vicki came out later and went back to work and Sandy went back to whatever she was doing. Everything seemed to get back to normal, so I thought.

* Sandy's office is actually Pam Sober's (Department Manager) office which Sandy was using since Pam was off that day.



Gregory Powell

APPEALS DIVISION	
Exhibit No.	1
For Identification Only	
As Evidence p.	1 of 1

12

 **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: 8/4/89
Claimant:	Vickie L. Jefferson (Poindex)	Decision No.: 8908242
	8408 Maymeadow Court	
	Baltimore, MD 21207	S. S. No.: 216-96-1356
Employer:	Alexander & Alexander, Inc.	L.O. No.: 045
	Hampton Plaza	Appellant: Claimant
	300 E. Joppa Road	
	Baltimore, MD 21204	

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 August 21, 1989

— APPEARANCES —

FOR THE CLAIMANT

Claimant - Present
George A. Epstein, Esquire

FOR THE EMPLOYER.

Rita Johnson,
Sr. Human Resources
Representative; and
Pamela Sober,
Manager of Word
Processing

FINDINGS OF FACT

The claimant's first day of work was October 5, 1987 and her last day was May 30, 1989. She worked full-time as a word processing operator at the rate of \$1,244.60 per month.

Presently, the claimant is not working. 13

On May 26, 1989, the claimant was observed by her supervisor, Ms. Sandy Vernago, talking with a co-worker, Mr. Gregory Powell.

Finally, Ms. Vernago asked the claimant if she could do her work, and the claimant responded that she could. The claimant, however, asked her supervisor why she was being singled out when others in the area were also talking and not in hurry to complete their duties. At that point, Ms. Vernago told the claimant that if she wanted to continue the discussion that they could do so, in her office, in private. The claimant declined and went back to her desk and proceeded to perform her job duties. Ms. Vernago, also, went into her office. Shortly thereafter, however, she came back and went over to the claimant and demanded that the claimant accompany her into the office. At that point, the credible evidence indicates that the claimant realized that she was no longer being given an option, but was being commanded to report to a counseling session. She followed Ms. Vernago and in private the incident was discussed between the two women. Afterwards, the claimant came out and went back to work and continued to work the rest of the day.

On May 30, the employer decided that the incident of May 26, amounted to insubordination and discharged the claimant on account of it.

CONCLUSIONS OF LAW

The word "insubordination," means that a direct order or command given by an employer was not complied with by an employee. In the present case, the facts as revealed at the hearing will not rise to the level of insubordination. The claimant, initially, was invited to attend a session in private with her supervisor, as opposed to being commanded to do so. Upon reflection, the employer decided to demand or order the claimant's presence in a private meeting, and made that clear to the claimant, who thereupon followed the order and went into the meeting.

Therefore, no insubordination has occurred in the present case.

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

Article 95A, Section 6(c) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the claimant's separation from her employment with Alexander & Alexander, Inc.

The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner below is hereby reversed.

Judy Lynn Goldenberg
 Judy-Lynn Goldenberg
 Hearing Examiner *RLG*

Date of Hearing: 7/25/89
 rch/Specialist ID: 45557
 Cassette Number: 6352, 6353
 Copies mailed on 8/4/89 to:
 Claimant
 Employer
 Unemployment Insurance - Northwest (MABS)

Rochlin & Settleman, P.A.
 c/o: George A. Epstein, Attorney-at-Law
 110 East Lexington Street
 Baltimore, Maryland 21202

Alexander & Alexander Inc.
100 Light Street
Baltimore, Maryland 21202
Telephone 301 547-2800
FAX 710-234-1059



August 18, 1989

Maryland Department of Economic &
Employment Development
1100 N. Eutaw Street
Room 515 - Appeals
Baltimore, MD 21201

RE: Vicki L. Jefferson (Poindexter) - Claimant
Alexander & Alexander Inc. - Employer

To Whom It May Concern:


Per my conversation with Mr. Whitman, Alexander & Alexander Inc. wishes to further appeal the claim based on further evidence. A formal letter will be mailed to your office within the next couple of days.

Please note for your file that all further correspondence relating to the Vicki L. Jefferson (Poindexter) case should be mailed to:

Mr. Michael Gallagher
Alexander & Alexander Inc.
Legal Department
10451 Mill Run Circle
Owings Mills, MD 21117

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Rita Johnson
Sr. H.R. Representative

RJ/rd

RECEIVED
AUG 21 1989
OFFICE OF BOARD APPEALS

Alexander & Alexander Inc.
Alexander & Alexander Building
10451 Mill Run Circle
Owings Mills, Maryland 21117
Telephone 301-363-5000
Telecopy 301-363-5316
Wats: 1-800-638-4780

**Alexander
& Alexander**

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22 1989

**OFFICE OF THE GENERAL COUNSEL
APPEALS**

Writer's Direct Dial: 301-363- 5239

Office of the General Counsel

August 21, 1989

Board of Appeals
Department of Economic & Employment Development
Room 515, Appeals Division
1100 North Eutaw Street
Baltimore, MD 21201

RE: Claim of Vicki L. Jefferson (Poindexter)
Decision No.: 8908242

Dear Sir/Madam:

On August 18, 1989, Alexander & Alexander Inc. ("A&A") filed its notice of appeal in the matter referenced above. This letter explains the basis for A&A's appeal.

The decision by Hearing Examiner Judy-Lynn Goldenberg ("the decision") should be reversed because it failed to consider all the evidence and its conclusions are inconsistent with the record. Specifically, the decision is in error because it concludes that the claimant "was invited to attend a session in private with her supervisor, as opposed to being commanded to do so. Upon reflection, the employer decided to demand or order the claimant's presence in a private meeting, and made that clear to the claimant, who thereupon followed the order and went into the meeting." See decision at p.2. For the following reasons, this conclusion is clearly erroneous.

Pamela Sober, Manager of the Word Processing Department, testified that the claimant had engaged in a series of insubordinate acts on May 26, 1989. The first series of insubordinate acts occurred when the claimant continued to talk to a co-worker after repeated instructions to cease such misconduct. See attachments 2 and 3. At one point, the claimant responded to her supervisor that "maybe I don't feel like going back to work." See attachment 4. Following this insubordinate conduct, the supervisor then directed the claimant to enter a private office to discuss this situation. Consistent with the earlier events, the supervisor had to instruct the claimant a second time to go to the office. See attachments 2, 3, and 4.

August 21, 1989

Page 2

The decision's only conclusion is that the claimant had been "invited to attend a session in private with her supervisor, as opposed to being commanded to so do." This conclusion is clearly erroneous. The claimant had engaged in a pattern of insubordinate action the entire day. Under these circumstances, the claimant's allegation that she thought the supervisor's instruction to be a mere "invitation" is just not credible. At best, the claimant's allegation demonstrates the tact and perseverance of her supervisor in what was clearly a difficult and frustrating situation. Moreover, the decision is erroneous because it fails to consider the previous insubordinate acts on that day. Finally, the decision erroneously infers some improper meaning to the fact that the insubordination occurred on May 26th, but the termination occurred on May 30th. The reason for this delay was that May 26th was a Friday, and the office was closed for the week-end as well as Monday, May 29th, due to Memorial Day. Accordingly, May 30th was the first opportunity to act upon the insubordination. Based upon the foregoing the decision should be reversed with a finding that the claimant had engaged in insubordination.

Please note that the employer's address as listed in the decision is erroneous. The proper address is contained in this document's letterhead. Because the decision was mailed to the incorrect address, it was not received by A&A until August 17, 1989. Since the appeal had to be filed by August 21, 1989, and the authors of attachments 2, 3 and 4 were not readily available, their statements are currently not in affidavit form. This appeal will be supplemented immediately by their affidavits.

If you have any questions or need additional information, please contact me.

Very truly yours,



Michael G. Gallagher
Attorney

MG/lar

Attachments

cc: Jane Kramer
George A. Epstein, Esq. (claimant's counsel)

C

C



Alexander & Alexander Inc.
100 Light Street
Baltimore, Maryland 21202
Telephone 301 547-2800
TWX 710-234-1059



August 18, 1989

Maryland Department of Economic &
Employment Development
1100 N. Eutaw Street
Room 515 - Appeals
Baltimore, MD 21201

RE: Vicki L. Jefferson (Poindexter) - Claimant
Alexander & Alexander Inc. - Employer

To Whom It May Concern:

Per my conversation with Mr. Whitman, Alexander & Alexander Inc. wishes to further appeal the claim based on further evidence. A formal letter will be mailed to your office within the next couple of days.

Please note for your file that all further correspondence relating to the Vicki L. Jefferson (Poindexter) case should be mailed to:

Mr. Michael Gallagher
Alexander & Alexander Inc.
Legal Department
10451 Mill Run Circle
Owings Mills, MD 21117

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Rita Johnson".

Rita Johnson
Sr. H.R. Representative

RJ/rd



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10/10

10/10

On May 26, 1989 I overheard a conversation between Vicki Jefferson and Sandy Vernago which Sandy, over a period of 2 hours, repeatedly asked Vicki and Gregg Powell to stop talking and start working. The first time Sandy asked in a very professional manner. After a ½ hour or so, Sandy again came over and asked them to get to work which neither one paid attention to her. The third time Sandy came over and asked Vicki if she had planned on working at all that day and Vicki's reply was, "Don't worry what I'm doing", at which time Sandy told Vicki that she wanted to talk to her in Pam's office. Vicki told her she didn't feel like discussing it. Sandy said that she felt a discussion was necessary, but Vicki refused a second time. The third time Sandy very loudly told her to get into Pam's office immediately, at which time Vicki went in.

I heard this conversation very clearly because I sit right on the other side of the partition where all of this took place. From what I could hear, Sandy handled the situation in a very professional manner and Vicki responded in a very rude, disrespectful manner.


Christina Eder

On Friday, May 26, 1989, Vicki Jefferson and Gregg Powell had been talking on and off for about two hours. Around 11:00 I overheard Sandy ask Vicki if she was going to work today, she said, "maybe, if I feel like it".

Sandy said something about they had been talking all morning, and Vicki replied with "don't worry about what I do". At that time, I think Gregg tried to difuse the situation by telling Vicki that maybe she should go sit down. There were several printers running at this time and I didn't hear what was said until Sandy requested that Vicki step into Pam's office with her. She said she didn't want to. The next thing I heard was Sandy loudly asking Vicki to go into Pam's office with her; which she did.

Christine Oliver
Christine Oliver

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MEMORANDUM

May 30, 1989

TO: FILE

FROM: Sandy Vernago
WP Supervisor

RE: May 26, 1989 - Vicki Jefferson

On Friday morning I asked Vicki for a doctor's note because she had been out for two days due to a car accident in which she passed out and totaled her car (on Thursday she stated she would bring one in). Her reply was that she didn't have it with her. I called Rita Johnson in Personnel to ask her if I was right to ask this of her. She told me to tell Vicki to make sure she brought the note in on Tuesday (Monday was a holiday).

I noticed from approximately 8:45 a.m. to 10:35 a.m. that Vicki was on and off the phone and away from her desk a lot. Around 10:35 a.m. Vicki was at Gregg's desk and I asked her if she could possibly go back to work. At that time she just looked at me and I asked her if she was on break. Vicki said "yes and no". I then asked her again and she said "maybe I don't feel like going back to work". Vicki then said "how can you approach me when everyone else is talking, including you?" I then stated that it was not her concern. During this time, Gregg motioned for Vicki to drop it and go back to her desk. I asked Vicki to come into Pam's office so we could discuss the problem. I asked Vicki again (second time) to come into Pam's office. She said "no, I don't want to". I then said "I am tired of this" and at that time (third time) I said, "come into Pam's office now!". We proceeded into Pam's office. I told Vicki that I was her Supervisor and that I had let the problem go on for what I thought was an extreme amount of time. She questioned my job and said "you are being unfair to me". I said "I treat everyone fairly in this department". She also stated that she knew everything that went on in this department and that was how she arrived at the fact that I was treating her unfairly. I told Vicki that I am not at liberty to discuss any problems with anyone that arise in this department and that she didn't know everything that went on (I was referring to the reason others may have been in discussion). I stated "if you have a problem with me then you can go to my Manager, Pam Sober and we can discuss the problem." Vicki then said "there is no problem". I told her that she should stop worrying about others and just worry about herself.

During this discussion, Vicki said "I don't want Pam calling me into her office on Tuesday to discuss this, because I don't feel like talking about it". I then informed Vicki it was my responsibility to inform Pam of the problem and that if she was called into Pam's office on Tuesday she would have to deal with the problem then.

MEMORANDUM

May 30, 1989
TO: FILE
RE: May 26, 1989 - Vicki Jefferson
Page Two

Vicki also told me during this dicussion that she had a dr's. appt. on Tuesday at 2:00 p.m., which meant that she would have to leave at 1:00 p.m. The week before she informed me that she had a dr's. appt. on Wednesday at the same time and she would have to leave at the same time as Tuesday. Vicki was told that she was supposed to make all her appointments in the evening. Her doctor had previously informed Pam Sober that Vicki could make appointments in the evening.

Alexander & Alexander Inc.
Alexander & Alexander Building
10451 Mill Run Circle
Owings Mills, Maryland 21117
Telephone 301-363-5000
Telecopy 301-363-5316
Wats: 1-800-638-4780

**Alexander
& Alexander**

Writer's Direct Dial: 301-363- 5239

Office of the General Counsel

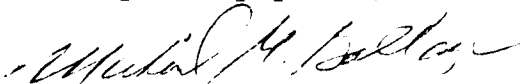
Board of Appeals
Department of Economic & Employment Development
Room 515, Appeals Division
1100 North Eutaw Street
Baltimore, MD 21201

RE: Claim of Vicki L. Jefferson (Poindexter)
Decision No.: 8908242

Dear Sir/Madam:

Pursuant to my August 21, 1989 letter, enclosed please find affidavits from Christine Oliver, Christine Eder and Sandy Vernago for your consideration in the matter referenced above.

Very truly yours,



Michael G. Gallagher
Attorney

MG/lar

Enclosure

cc: George Epstein (Claimant's counsel)

RECEIVED

AUG 30 1989

OFFICE OF BOARD APPEALS

BEFORE THE
BOARD OF APPEALS
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT
BALTIMORE, MARYLAND

*
In the Matter of *
Vicki L. Jefferson (Poindexter) * Decision No.: 89-082-42
*
* * * * *

AFFIDAVIT

CHRISTINE OLIVER, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and have personal knowledge of the following matters.
2. On Friday, May 26, 1989, Vicki Jefferson and Gregg Powell had been talking on and off for about two hours. Around 11:00 I overheard Sandy ask Vicki if she was going to work today, she said, "maybe, if I feel like it".
3. Sandy said something about they had been talking all morning, and Vicki replied with "don't worry about what I do". At that time, I think Gregg tried to defuse the situation by telling Vicki that maybe she should go sit down. There were several printers running at this time and I didn't hear what was said until Sandy requested that Vicki step into Pam's office with her. She said she didn't want to. The next thing I heard was Sandy loudly asking Vicki to go into Pam's office with her; which she did.

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AUG 30 1989

OFFICE OF BOARD APPEALS

Christine Oliver

CHRISTINE OLIVER

25

Sworn to before me this 27th day of August 1989.

My commission expires:

Virvan S. Gregory
NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 1, 1990

RECEIVED

AUG 30 1989

OFFICE OF BOARD APPEALS

3. I heard this conversation very clearly because I sit right on the other side of the partition where all of this took place. From what I could hear, Sandy handled the situation in a very professional manner and Vicki responded in a very rude, disrespectful manner.

Christine Eder
CHRISTINE EDER

Sworn to before me this 29th day of August 1989.

My commission expires:

William S. Gregory
NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 1, 1990

RECEIVED

AUG 30 1989

OFFICE OF BOARD APPEALS

BEFORE THE
BOARD OF APPEALS
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT
BALTIMORE, MARYLAND

In the Matter of *
Vicki L. Jefferson (Poindexter) * Decision No.: 89-082-42
*

* * * * *

AFFIDAVIT

SANDY VERNAGO, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and have personal knowledge of the following matters.
2. On May 30, 1989 I drafted a memorandum to the file recording my recollection of a series of incidents with Vicki Jefferson. A copy of that memorandum is enclosed as attachment 1.
3. I have reviewed the memorandum and declare that it is accurate and truthful.

Sandy Vernago
SANDY VERNAGO

Sworn to before me this 29th day of August 1989.

My commission expires:

Virian S. Gregory
NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 1, 1990

RECEIVED

AUG 30 1989

OFFICE OF BOARD APPEALS

29

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.
VICKI L. JEFFERSON	ALEXANDER & ALEXANDER INC.	08/30/89	3908242	216-96-1356

EMPLOYER

045

Appellant:

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:

VICKI L. JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

PAUL G. ZIMMERMANN

COUNSEL

Copies Mailed To:

ALEXANDER & ALEXANDER INC.
LEGAL DEPARTMENT
ATTN: MR. MICHAEL GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117

GEORGE A. EPSTEIN, ESQUIRE
ROCHLIN & SETTLEMAN, P.A.
110 EAST LEXINGTON STREET
BALTIMORE, MD 21202

ALEXANDER & ALEXANDER INC.
ATTN: RITA JOHNSON, SR H.R. RE
100 LIGHT STREET
BALTIMORE, MD 21202

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.
VICKI L. JEFFERSON	ALEXANDER & ALEXANDER INC.	08/30/89	8908242	216-96-1356

EMPLOYER

045

Appellant:

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:

ALEXANDER & ALEXANDER INC.
 LEGAL DEPARTMENT
 ATTN: MR. MICHAEL GALLAGHER
 10451 MILL RUN CIRCLE
 OWINGS MILLS, MD 21117

PAUL G. ZIMMERMANN

COUNSEL

Copies Mailed To:

VICKI L. JEFFERSON
 8408 MAYMEADOW COURT
 BALTIMORE, MD 21207

GEORGE A. EPSTEIN, ESQUIRE
 ROCHLIN & SETTLEMAN, P.A.
 110 EAST LEXINGTON STREET
 BALTIMORE, MD 21202

ALEXANDER & ALEXANDER INC.
 ATTN: RITA JOHNSON, SR H.R. RE
 100 LIGHT STREET
 BALTIMORE, MD 21202

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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.
VICKI L. JEFFERSON	ALEXANDER & ALEXANDER INC.	02/10/89	8908242	216-95-1356

EMPLOYER

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OWINGS MILLS, MD 21117

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DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

333-5032

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NOTICE OF APPEAL

Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
VICKI L. JEFFERSON	ALEXANDER & ALEXANDER INC.	08/30/89	8908242	216-96-1356

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 OWINGS MILLS, MD 21117

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 110 EAST LEXINGTON STREET
 BALTIMORE, MD 21202

GG

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

DATE: November 20, 1989
Telephone: (301) 333-5033

CLAIMANT: Vicki Jefferson
8408 Maymeadow Court
Baltimore, MD 21207

APPEAL NO.: 8908242

S. S. NO.: 216-96-1356

EMPLOYER: Alexander & Alexander, Inc. L.O. NO.: 45
Legal Dept.
ATTN: Michael Gallagher
10451 Mill Run Circle
Owings Mills, MD 21117

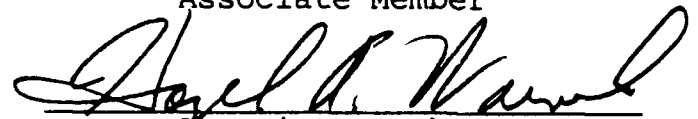
APPELLANT: EMPLOYER

REMAND ORDER

This case is remanded for a de novo hearing. The Board of Appeals is unable to review this case due to the fact that a tape of the hearing is missing.



Associate Member



Associate Member

D:H
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

George A. Epstein, Esquire
110 E. Lexington Street
Baltimore, MD 21202

Alexander & Alexander, Inc.
ATTN: Rita Johnson, Sr. HR Rep.
100 Light Street
Baltimore, MD 21202

UNEMPLOYMENT INSURANCE - NORTHWEST

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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	11/29/89	890824	316-95-1126

Appellant: EMPLOYER Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER, 12 1989 at 11:30 AM EST (F. or B. C. Time)
~~DECEMBER, (TWELVETH) 1989~~

HEARING LOCATION
NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner: MARY WELCOME

Mail To:
VICKI JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

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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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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

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HEARINGS, ISSUES, AGENTS AND ATTORNEYS

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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.

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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	11/29/89	6908242	216-96-1356

Appellant: EMPLOYER Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER, 12 1989 at 11:30 AM EST (EST is not true)
DECEMBER, (TWELVETH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:
MARY WELCOME

Mail To:
ALEXANDER & ALEXANDER INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
DOWINGS MILLS, MD 21117

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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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Issue:
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INFORMATION FOR PARTIES TO THE APPEAL HEARING

WITHDRAWAL OF APPEAL

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6(c)	Was the Claimant suspended or discharged for misconduct?	From a 5 week disqualification up to a 10 week disqualification
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DISMISSAL

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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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER	11/30/89	8908742	215-06-1355

Appellant: EMPLOYER Local Office No. 345

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER, 12 1989 at 11:30 AM EST (F) b. on time
DECEMBER, (TWELVE) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
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BALTIMORE, MD 21215

Hearing Examiner:
MARY WILCOXE

Mail To:
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Issue

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1.9

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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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	11/30/89	8902262	216-96-1356

Appellant: EMPLOYER Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER 12 1989 at 11:30 AM EST () b.c. time
DECEMBER, (TWELVETH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
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BALTIMORE, MD 21215

Hearing Examiner:

MARY WELCOME

Mail To:

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LEGAL DEPT. ATTN: M GALLAGHER
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6(c)	Was the Claimant suspended or discharged for misconduct?	From a 5 week disqualification up to a total 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, or 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 hearing will be 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 2-201 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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER, INC.	11/30/89	998242	15-95-1886

Appellant: EMPLOYER

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER, 12, 1989 at 11:30 AM EST (P. M.) of the DECEMBER, (TWELVETH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

MARY WELCOME

Mail To:

GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202

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 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.)

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

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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.

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.

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DISMISSAL

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INQUIRIES

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HEARING RULES

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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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER, INC.	11/30/89	908242	216-96-13

Appellant: **EMPLOYER** Local Office No. **045**

A hearing on this appeal will be held before the Hearing Examiner on DECEMBER, 12, 1989 at 11:30 AM EST if possible on DECEMBER, (TWELVETH) 1989

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:
MARY WILCOXE

Mail To:
ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202

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

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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.

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

SUBPOENA

In the Matter of the Claim of:

Appeal Number: 8908242-EP

Vicki Jefferson

Social Security Number: 216-96-1356

To: Mr. Roy L. Bagley

THE SHERIFF OF PRIVATE PROCESSER (Vicki Jefferson), Greeting:

We Command You, That You Summon Mr. Gregory Powell

4008 Dorchester Road

Baltimore, Maryland 21206

all business and excuses laid aside, to appear and attend before the Hearings Examiner

Ms. Mary Welcome

4025 Mortimer Avenue (near Northern Pkwy.
at & Reisterstown Road, in the City of Baltimore, Maryland 21215

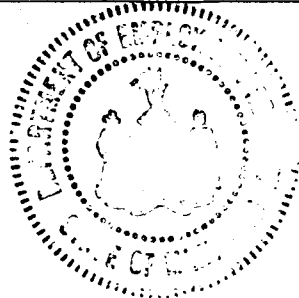
on December 12, 1989 at 11:30 o'clock A. M., to testify and give evidence

in a certain hearing or investigation pertaining to the claim of Vicki Jefferson

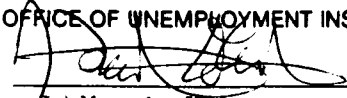
for unemployment insurance benefits

WITNESS the seal of the Department and the signature of Mr. J. Martin Whitman

Administrative Officer




OFFICE OF UNEMPLOYMENT INSURANCE


J. Martin Whitman
Administrative Officer

Issued this 7th day of December, 19 89

At the request of Claimant


Rec'd 12/7 12:50 pm 41

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	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	12/18/89	8908242	216-96-1356

Requesting Party: **CLAIMANT**

VICKI JEFFERSON

A request for a postponement of the hearing in this case, which was scheduled before the Hearing Examiner on 12/12/89

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

All parties will be notified when this hearing is rescheduled.

Mail To: **VICKI JEFFERSON**
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

cc: **ALEXANDER & ALEXANDER INC.**
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117

GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202

ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202

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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	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	12/18/89	8908242	216-96-1356

Requesting Party: **CLAIMANT**

ALEXANDER & ALEXANDER INC.

A request for a postponement of the hearing in this case, which was scheduled before the Hearing Examiner on 12/12/89

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

All parties will be notified when this hearing is rescheduled.

Mail To: **ALEXANDER & ALEXANDER INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117**

cc:

**VICKI JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207**

**GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202**

**ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202**

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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	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	12/16/89	3908242	216-95-1356

Requesting Party: CLAIMANT

GEORGE A. EPSTEIN, ESQUIRE

A request for a postponement of the hearing in this case, which was scheduled before the Hearing Examiner on 12/12/89

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

All parties will be notified when this hearing is rescheduled.

Mail To:

GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202

cc:

VICKI JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

ALEXANDER & ALEXANDER INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117

ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202

HH

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	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	12/18/89	8908242	216-96-1356

Requesting Party: CLAIMANT

ALEXANDER & ALEXANDER, INC.

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Mail To: ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202

cc:

VICKI JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

ALEXANDER & ALEXANDER INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
CWINGS MILLS, MD 21117

GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202

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U

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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	01/05/90	8908242	216-96-1356

Appellant: EMPLOYER

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 25 1990 at 12:30 P.M. EST (Filing by on-line)
JANUARY, (TWENTY FIFTH) 199

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

ROBIN J. RODINSKY

Mail To:

VICKI JEFFERSON
8403 MAYMEADOW COURT
BALTIMORE, MD 21207

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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.)

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DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND
APPEALS DIVISION - ROOM 511
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APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	01/05/90	8908242	216-96-1356

Appellant: EMPLOYER

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 25 1990 at 12:30 P.M. EST (P. or D. or L.)
JANUARY, (TWENTY FIFTH) 1990

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

ROBIN PRODINSKY

Mail To:

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LEGAL DEPT. ATTN: M GALLAGHER
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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*
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DISMISSAL

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INQUIRIES

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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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	01/05/90	3908242	216-96-1355

Appellant: EMPLOYER

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 25 1990 at 12:30 PM EST of Baltimore
JANUARY, (TWENTY FIFTH) 1990

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

ROBIN RUBINSKY

Mail To:

GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202

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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 4(B) OR 6(C) OF THE LAW. (SECTION 6(A) MAY ALSO APPLY. SEE OTHER SIDE FOR SECTION 3 ISSUES.)

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STATE OF MARYLAND
APPEALS DIVISION - ROOM 511
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APPEAL HEARING NOTICE

Claimant's Name	Employer's Name	Date Mailed	Appeal No.	SS No.
VICKI JEFFERSON	AL XANDER & ALEXANDER INC.	01/05/90	8908242	210-96-1556

Appellant: EMPLOYER Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on JANUARY, 25 1990 at 12:30 P.M. EST (if applicable).

HEARING LOCATION

NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:
ROBIN PRODINSKY

Mail To:
ALEXANDER & ALEXANDER, INC.
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21208

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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

SUBPOENA

In the Matter of the Claim of:

Appeal Number: 8908242-EP

Vicki Jefferson

Social Security Number: 216-96-1356

To: Honorable J. Edward Malone

THE SHERIFF OF Baltimore County, Greeting:

We Command You, That You Summon Mr. Gregory Powell

4008 Dorchester Road

Baltimore, Maryland 21206

all business and excuses laid aside, to appear and attend before the Hearings Examiner

Mr. Robin Brodinsky

4025 Mortimer Avenue (Near

at Northern Pkwy. & Reisterstown Rd., in the City of Baltimore, Maryland 21215

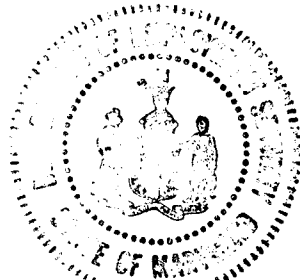
on January 25, 1990 at 12:30 o'clock P.-M., to testify and give evidence

in a certain hearing or investigation pertaining to the claim of Vickie Jefferson

_____ for unemployment insurance benefits

WITNESS the seal of the Department and the signature of Mr. Selig A. Wolfe

Administrative Officer



OFFICE OF UNEMPLOYMENT INSURANCE

Selig A. Wolfe
Selig A. Wolfe

Administrative Officer

Issued this 9th day of January, 19 90

At the request of Claimant

LAW OFFICES
ROCHLIN AND SETTLEMAN P. A.

110 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-1784

ROCHLIN, SETTLEMAN & GOLDMAN
308 SECOND STREET
LAUREL, MARYLAND 20707
(301) 792-7440

(301) 539-3070
TOLL FREE: (800) 342-5983
TELECOPIER: (301) 837-7430

THE PATRICK CENTER
SUITE 500
30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

January 17, 1990

Administrative Officer
Department of Economic
& Employment Development
Appeals Division - Room 511
1100 North Eutaw Street
Baltimore, Maryland 21201

Re: Claimant: Vicki Jefferson
Employer: Alexander & Alexander, Inc.
Appeal #: 8908242

Dear Sir/Madam:

I represent the Claimant in the above-referenced matter, which is scheduled for hearing on January 25, 1990, 12:30 p.m. at the Northwest Unemployment Office before Hearing Examiner, Robin Brodinsky. Please issue a Subpoena to:

Gregory Powell
4008 Dorchester Road
Baltimore, Maryland 21206

Thank you for your attention to this matter.

Very truly yours,

ROCHLIN & SETTLEMAN, P.A.



George A. Epstein

GAE:tmc

cc: Ms. Vicki Poindexter

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

TRANSCRIPT OF TESTIMONY

Heard before

Robin L. Brodinsky

Hearings
Examiner

in the case

Vicki L. Jefferson
8408 Maymeadow Court
Baltimore, MD 21207

S.S. #216-96-1356

Appeal #8908242

Alexander & Alexander, Inc.
Hampton Plaza
300 E. Joppa Road
Towson, MD 21204

APPEARANCES

Vicki L. Jefferson - claimant
George A. Epstein - Attorney

Pamela Sober - Mgr. of
Word Processing
Sandy Vernago - Sup'r.
of Word Processing
Steven Frenkil - Attorney

Robin L. Brodinsky
Hearings Examiner

TIME: 12:30 p.m.
DATE: January 25, 1990
PLACE: Baltimore, MD

TRANSCRIBED BY: ALICE MARIE COOPER

Unemployment Insurance Appeal #8908242. Vicki Jefferson is the claimant. Alexander & Alexander, Incorporated is the employer. We're meeting at the Northwest offices on January 25, 1990 at 1:10 p.m. The claimant is present, represented by George Epstein, Esquire. The employer has as its witnesses Ms. Sandy Vernago, a supervisor of Word Processing; Pam Sober, Manager of Word Processing; Rita Johnson, Senior Human Resources Representative. And the employer is represented by Steven Frenkil, Esquire, at Semmes, Bowen & Semmes. I'm Robin Brodinsky. I'm the hearings examiner. This matter was remanded by the Board of Appeals on November 20, 1989 for a de novo hearing for the reason that a tape of the last hearing was missing. A hearing was held in August, I believe, August the 4th, before Judy Goldenberg, Hearings Examiner, at which time she issued a decision which modified the determination of the claims examiner and allowed benefits to the claimant under Section 6 of the Unemployment Insurance Law. The claimant had been disqualified for a period of four weeks following the separation from employment and had noted a timely appeal. And the determination was that she was discharged because of insubordination but that the claimant's actions - however, the claimant's actions - "The information presented does not show that the claimant's actions amounted to gross misconduct. However, the claimant's actions do constitute misconduct in connection with the work." So, from that determination, the claimant filed the appeal. All right. You've all been to a previous hearing and have a good idea of how the hearing works.

I'm not gonna go through those procedures again. I'm going to ask each of you to please raise your right hands and be sworn.

OATH ADMINISTERED

All Parties: Yes.

Hearings Examiner: Thank you. I do - I would like to know, however, before we begin whether Ms. Jefferson has had any employment since she was separated from Alexander & Alexander?

Ms. Jefferson: No.

Hearings Examiner: No? Okay. And, uhm, I understand that you have been receiving benefits and they've been exhausted. Is that right?

Ms. Jefferson: Yes.

Hearings Examiner: During all those weeks were you physically able to work?

Ms. Jefferson: Yes.

Hearings Examiner: And did you look for work every week?

Ms. Jefferson: Yes, except for five weeks. I think it was five weeks that I couldn't work because I had had a baby.

Hearings Examiner: All right. Apparently, the benefits must have been extended. I don't know. Did you receive twenty-six...

Ms. Jefferson: No. I wasn't receiving benefits when I wasn't able to look for work.

Hearings Examiner: Okay.

Ms. Jefferson: And that was the time when I had the baby.

Hearings Examiner: All right. The employer filed an appeal from the decision of the hearings examiner and it's been remanded. The employer has the burden of going forward as an appellant. However, the - Inasmuch as this was originally the claimant's appeal, the claimant has the burden of production of evidence. We've kind of discussed that before we went on tape. But, as I said, since there was a discharge, I would begin with the employer and ask for evidence and testimony concerning the discharge. All right. Mr. Frenkil, do you want to conduct the investigation (inaudible)?

Mr. Frenkil: Yes, please, with one notation if I might. Although there's no need for explanation of procedure, Ms. Vernago, - in fact, she was not present at the prior hearing at this level. I've explained to her the procedures. I mentioned that only to emphasize that I think, as the evidence will show, that was an essential issue, I think in the prior hearing, as to the facts pertinent to her. So I will

call her as, in fact, the first witness.

Hearings Examiner:

Okay.

Mr. Frenkil:

Is it your preference that we do one person at a time?

Hearings Examiner:

Yes. And permit cross examination of each.

Mr. Frenkil:

Okay. Would you please state your name for the record?

Ms. Vernago:

All right. My name is Sandy Vernago.

Mr. Frenkil:

And, Ms. Vernago, where do you work and for how long?

Ms. Vernago:

I work for Alexander & Alexander. I've been employed there for a little over four years.

Mr. Frenkil:

What is your present position?

Ms. Vernago:

Supervisor of the Word Processing Department.

Mr. Frenkil:

And how long have you held that position?

Ms. Vernago:

A year and a half.

Mr. Frenkil:

Would that be - I think you indicated earlier - Was the late 1988?

Ms. Vernago:

I believe so.

Mr. Frenkil:

Do you remember what month that was?

Ms. Vernago:

November.

Mr. Frenkil:

And you still hold that position?

Ms. Vernago:

Yes.

Mr. Frenkil:

Prior to being a supervisor, were you an

assistant supervisor?

Ms. Vernago: Yes.

Mr. Frenkil: Okay. In the same department?

Ms. Vernago: Yes.

Mr. Frenkil: And for how long was that?

Ms. Vernago: Two years.

Mr. Frenkil: During that time, to whom did you report?

Ms. Vernago: Pam Sober, the Manager.

Mr. Frenkil: During both jobs?

Ms. Vernago: Right.

Mr. Frenkil: And you still report to her?

Ms. Vernago: Yes.

Mr. Frenkil: How many people did you supervisor in the spring of 19-- Say in May of 1989?

Ms. Vernago: I believe it was either eleven or twelve.

Mr. Frenkil: And May of 1989 is when Ms. Jefferson was terminated, is that correct?

Ms. Vernago: Right.

Mr. Frenkil: And were all these people working in word processing capacities?

Ms. Vernago: Yes.

Mr. Frenkil: Was one of those people Ms. Jefferson?

Ms. Vernago: Yes.

Mr. Frenkil: Can you describe, generally, the department, the functions and how you handled turn-around time?

Ms. Vernago: Okay. We have a twenty-four hour turn-

around time that we're supposed to meet. The department - the works comes in and we have to get it out. We type for over three hundred authors. So, it's a production department and it's very important that we meet our deadlines.

Mr. Frenkil: What do you mean by "production department"?

Ms. Vernago: We have to get the work out at the dead- you know, the time.

Mr. Frenkil: Is there a way that you measure production?

Ms. Vernago: Yes.

Mr. Frenkil: And what is that?

Ms. Vernago: We have a tracking system, a word processing tracking system.

Mr. Frenkil: Can you briefly describe how that works?

Ms. Vernago: Okay. Well, I think Pam would be better able to explain that more than I could.

Mr. Frenkil: All right. When did you first meet Vicki Jefferson?

Ms. Vernago: When she was hired.

Mr. Frenkil: Did you all get along?

Ms. Vernago: I thought so. Yes.

Mr. Frenkil: On June - On May 26th, 1989 did you have any dealings with Ms. Jefferson?

Ms. Vernago: Yes.

Mr. Frenkil: Can you briefly describe what happened?

Ms. Vernago: Okay. Well, that morning when she came in - well, she was out two days before that. So, she did say that she had a doctor's slip cause she was in a car accident. So, when she came in, I asked for the doctor's slip. She didn't have it. So I told her she needed to bring it in Tuesday. So then, I noticed from that time on until probably after 10, 10:30, somewhere around there, she'd really done nothing in the morning but talk. And she was on the phone. And she was away from her desk.

Mr. Frenkil: What time frame are you describing?

Ms. Vernago: 8:30 to 10:30. Somewhere in between there. 10:35 to be exact. That's when I approached her at that time, at 10:35.

Mr. Frenkil: And what did you do? And what happened?

Ms. Vernago: Well, when I approached her, I asked her if she could go back to work.

Mr. Frenkil: Remember what she said, as best you can.

Ms. Vernago: Okay. And then, uhm - Wait a minute. First I asked her if she was on break and she said yes and no. And then I said could you go back to work and she goes, "Well, maybe I don't feel like it." So

then, I said can you come into Pam's office. And she said, "No, I don't want to." And I said come into Pam's office. She said, "No." I said come into Pam's office. I didn't invite her to come into Pam's office. I gave her a direct order.

Mr. Frenkil: Well, why were you inviting her to Pam's office rather than your office?

Ms. Vernago: Because my office doesn't have a door and it's not a closed-in office. There's no privacy in my - I really have a cubicle. Pam's is a closed-in office.

Mr. Frenkil: For what purpose were you telling her...

Ms. Vernago: Well, I wanted to discuss the matter.

Mr. Frenkil: Okay.

Ms. Vernago: Because it was in front of the whole department. I just felt like I gave her a direct order and she, in front of everybody, just flatly said no. So I was irritated.

Mr. Frenkil: What was your tone of voice and her tone of voice during that interaction?

Ms. Vernago: What do you mean? Were we yelling?

Mr. Frenkil: Can you describe the...

Ms. Vernago: (Inaudible)...

Mr. Frenkil: ...(inaudible)?

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Ms. Vernago: ...I wasn't - It was in front of Greg Powell at the time when I asked her about work. I was not yelling at her.

Mr. Frenkil: And as you moved to the stage of telling her...

Ms. Vernago: The third one, yes, cause I was very disturbed.

Mr. Frenkil: Uh,...

Ms. Vernago: And as she'd say no, she'd back away from me, back to her desk.

Mr. Frenkil: What happened after the third time you told her to come into Pam's office?

Ms. Vernago: She finally came into Pam's office.

Mr. Frenkil: And what happened at that point?

Ms. Vernago: Well then, she told me that I was treating her unfairly. And that everybody else in the department was talking, including myself. And I told her it was none of her concern because it's part of my job to deal with authors. I have to talk to people about work related things and that she didn't know what was going on on the other side of the room. And I wasn't at liberty to discuss anything with her if anybody else had a problem. I have to keep that confidential.

Mr. Frenkil: What was the issue with the doctor's slip? What was the significance of that?

Ms. Vernago: Because she had used up all her eight sick days...

Mr. Epstein: I'm going to object to this because I don't think it has anything to do with the issue for which...

Hearings Examiner: Overruled.

Mr. Epstein: ...she was discharged.

Hearings Examiner: (Inaudible). It's to show absence.

Mr. Epstein: She was discharged for insubor-- allegations that she was discharged for insubordination, not because of excessive absence.

Mr. Frenkil: Well, for the record and for your benefit, the significance of whether or not her conduct was insubordinate is directly affected by the context in which she was operating and what the doctor's slip was about.

Hearings Examiner: Yes. I'll still allow it.

Mr. Frenkil: Let me lay a better foundation, if I might. Let me show you a memo dated March 29, 1989 and ask you have you ever seen that before?

Ms. Vernago: Yes, I have. I called Vicki into Pam's office that morning and had Vicki sign

this (inaudible).

Mr. Frenkil:

Is your signature on that?

Ms. Vernago:

My signature's on there and so is Vicki's.

Mr. Frenkil:

Does that memo summarize the amount of sick time that had been utilized by Ms. Jefferson as of that point in time?

Ms. Vernago:

Right. It does.

Mr. Frenkil:

She'd used up her sick time at that point?

Ms. Vernago:

Yes.

Mr. Frenkil:

Now, Ms. Jefferson was pregnant during this period, is that correct?

Ms. Vernago:

Yes.

Mr. Frenkil:

Were there issues concerning her health that affected her work that you were aware of?

Ms. Vernago:

I don't understand...

Mr. Frenkil:

Affected her attendance at work?

Ms. Vernago:

Uhm, yes, I guess.

Mr. Frenkil:

What were those issues?

Ms. Vernago:

Because she was pregnant, she couldn't wake up.

Mr. Frenkil:

Is that what you had been told?

Ms. Vernago:

That's what she told me...

Mr. Epstein:

Again, I'm gonna object cause I think we're getting far outside the scope of

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the events of May 26th.

Hearings Examiner:

Overruled.

Ms. Vernago:

At the time of this memo, Vicki did not agree with me.

Mr. Frenkil:

What did she say?

Ms. Vernago:

She said she didn't agree with the fact excessive and she didn't want to sign it. And she had questions. So I relayed those questions to Pam Sober.

Mr. Frenkil:

Were there any other issues you had with Ms. Jefferson subsequent to the March 29th memo and prior to the day that you called her into the office three times?

Ms. Vernago:

About being sick?

Mr. Frenkil:

About any aspect of her work.

Ms. Vernago:

Right. For being late and just her productivity and her errors.

Mr. Frenkil:

You had discussed these with her?

Ms. Vernago:

They were discussed prior to this, yes.

Mr. Frenkil:

How about after that time?

Ms. Vernago:

No. Not (inaudible). I can't remember. It's been such a long time.

Mr. Frenkil:

Now, did you - What did you do after you finished meeting with Ms. Jefferson on the 26th?

Ms. Vernago:

Well, after we finished meeting, she went back to work and I went back to work.

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And then at that point in time, Pam wasn't in that day. Pam's boss wasn't in, which is senior management. And the head of Personnel wasn't in. So I called Rita in Personnel and I asked her...

Mr. Frenkil: Rita Johnson, who's sitting here today?

Ms. Vernago: Right. Rita Johnson...and asked her what steps should I take. What to do. So, she told me to write everything down in a memo. So, at that time I wrote everything down that happened.

Mr. Frenkil: Is that by handwriting or typewritten?

Ms. Vernago: Yeah. It was a handwritten note that day. I wrote everything down...

Mr. Frenkil: And was it subsequently typed up?

Ms. Vernago: Yeah. The following, I think, Tuesday, it was typed up.

Mr. Frenkil: Okay. Now, what day of the week was the incident that occurred?

Ms. Vernago: Friday.

Mr. Frenkil: The 26th?

Ms. Vernago: Right. It was on a Friday that it happened.

Mr. Frenkil: Why didn't the memo get typed up on Monday, the 29th?

Ms. Vernago: Monday was a holiday.

Mr. Frenkil: What holiday was that?

Ms. Vernago: Memorial, is at the end of May?
Memorial.

Mr. Frenkil: Memorial Day?

Ms. Vernago: Right.

Mr. Frenkil: Let me show you a memorandum dated May 30, 1989 and ask if you've seen that?

PAUSE

Mr. Frenkil: Is that your signature on the top of the page?

Ms. Vernago: Yes, it is.

Mr. Frenkil: Is this the memorandum you were just referring to?

Ms. Vernago: Yes.

Mr. Frenkil: Could I ask that both of these be admitted as - consecutively as numbers 1 and two, please?

Hearings Examiner: Yes. Objection?

Mr. Epstein: Uh, I'm gonna object to the one from - The two that you're talking about are the one from March 29th...

Mr. Frenkil: March 29th would be #1.

Mr. Epstein: I'm gonna object to the one from March 29th because, again, I don't think it has anything to do with the immediate issue in this case.

Hearings Examiner: Overruled because the question of absence can always be considered in terms of a

discharge for misconduct. The specific allegation in the Notice of Benefit Determination is not gospel. It's a conclusion of a claims examiner out here. Overruled.

Mr. Frenkil: In the memorandum, there's a reference to a discussion in which Ms. Jefferson, according to your quotation says, "You are being unfair to me."

Ms. Vernago: Right.

Mr. Frenkil: Can you describe that portion of the conversation, what she said and what you said?

Ms. Vernago: She told me I was being unfair to her. I was treating her unfairly. And that she knew everything that went on in the department. And that other people were talking. And at that point in time, that's when I told her she did not. And I wasn't at liberty to discuss anything - you know, anybody else's problems with her.

Mr. Frenkil: What, if anything, did you say about a future meeting with Ms. Sober?

Ms. Vernago: I told her that - You know, cause she told me she did not want to discuss this with Pam - she didn't want to be called

into Pam's office on Tuesday to talk about it - I said it was my responsibility. Because Pam was my manager, I had to discuss this problem with Pam.

Mr. Frenkil: What, if any, response did she give you?

Ms. Vernago: Well, that was her response. She didn't want to talk about it. And I told her she'd have to deal with the problem with Pam at that time. They'd have to deal with the problem.

Mr. Frenkil: Did there come a time that you talked to Ms. Sober about this situation?

Ms. Vernago: I called Pam at home and she wasn't home. I left a message on her answering machine. At 3 p.m. we talked on the telephone.

Mr. Frenkil: On what day?

Ms. Vernago: That day. The same day, 3/26. And I explained everything to her. At that point in time, I already had everything written down because Rita Johnson in Personnel told me to write it down so it would be fresh in my mind.

Mr. Frenkil: This Exhibit 2, the May 29, 1989 memo, did you add anything to that when it was typed up or was it in the same form that

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you handwrote it?

Ms. Vernago: It was in the same form.

Mr. Frenkil: And did you sign this page after the material was typed on there or before it was typed?

Ms. Vernago: Right. After it was typed, then I signed my name to it.

Mr. Frenkil: Did you read this prior to the time you signed your name?

Ms. Vernago: Yes.

Mr. Frenkil: At the time...

Ms. Vernago: I typed it myself.

Mr. Frenkil: You typed it, okay.

Ms. Vernago: Right. Nobody typed it for me. I did it myself.

Hearings Examiner: Would you open the door, please?

? Sure.

Hearings Examiner: All the way open. Just move yourself. All the way, okay.

? (Inaudible).

Hearings Examiner: I mean just move out and put the chair behind...

Mr. Frenkil: Murphy's Law.

Hearings Examiner: Yeah.

? Thank you.

Hearings Examiner: Okay.

Mr. Frenkil: The (inaudible). (Inaudible).

LAUGHTER

Mr. Frenkil: I have no further questions of Ms. Vernago.

Hearings Examiner: Mr. Epstein?

Mr. Epstein: All right. Ms. Vernago, you indicated that after this memorandum, dated March 29, 1989 was signed, that you don't recall having any further discussions with, uhm,...

Ms. Vernago: Pam had a discussion with Vicki after that, after this memo was signed. And at that time, Pam went over all the questions that Vicki had asked me that I could not answer for her. My manager took over then. And she answered her questions.

Mr. Epstein: Okay. So the next time that you had any discussions, consult with...

Ms. Vernago: I've had - After that...

Mr. Epstein: Well, let me finish asking the question.

Ms. Vernago: Oh, okay. I'm sorry.

Mr. Epstein: The next time that you had any discussions with Ms. Jefferson concerning any issues at work was on May 26th, 1989, is that correct?

Ms. Vernago: No. I have to look - I have here the notes from her file. All right...

Mr. Epstein: Okay.

Ms. Vernago: ...That was March, right? This was March. On March 31st...

Mr. Epstein: (Inaudible)...

Ms. Vernago: ...I had a discussion with her about calling in and she was supposed to speak with her supervisor and not Greg. She called in sick and she told Greg she wouldn't be in till 9. And in the handbook, employee handbook, it states that she must speak with her supervisor when she calls in. So, yeah. On March 31st, I did have a discussion with Vicki. And, also, April 21st I had a discussion with Vicki cause this was - she was on the phone and I just asked her to limit her phone calls, extensive phone calls to her break and her lunch time. So, there were other incidents. They were just in Vicki's attendance folder. As I would have a little discussion, I would write it down that day so it would be documented because we have to document everything.

Mr. Epstein: Okay. Now, on May 26th, you indicated that you asked her to come into your office, is that correct?

Ms. Vernago: I didn't give her a choice.

Mr. Epstein: What did you say? Do you remember what your exact words were?

Ms. Vernago: I said come into Pam's office.

Mr. Epstein: You didn't phrase it as a question?

Ms. Vernago: No. Well, I didn't give her - I didn't give it to her like it was an invitation, like would you like to. I was giving her a direct order.

Mr. Epstein: I'm gonna direct your attention to your own memorandum of May 30th, 1989. You indicate in there that, "I asked Vicki to come into Pam's office so we could discuss the problem."

Ms. Vernago: Right.

Mr. Epstein: Is that, in fact, what you did?

Ms. Vernago: I did. I said Vicki, can you come into Pam's office.

Mr. Epstein: Okay. And, uh,...

Ms. Vernago: So I guess that could be (inaudible) as a question...

Mr. Epstein: ...af--

Ms. Vernago: ...Can you.

Mr. Epstein: Okay. After, after Ms. Jefferson declined to do that, you went back into your own office for...

Ms. Vernago: No, I did not.

Mr. Epstein: ...a while, isn't that correct?

Ms. Vernago: No. That's not correct. I never stepped foot back into my office. I stood right there. So, that's an incorrect statement.

Mr. Epstein: Gregory Powell still works for Alexander & Alexander, isn't that correct?

Ms. Vernago: Yes, he does.

Mr. Epstein: In the same department?

Ms. Vernago: Uhm um. (AFFIRMATIVE)

Mr. Epstein: And, eventually, Ms. Jefferson did come into the office and discussed the issues with you, isn't that correct?

Ms. Vernago: After I had to tell her three times.
Yes.

Mr. Epstein: All right. I have no further questions.

Hearings Examiner: Thank you. Next witness.

Mr. Frenkil: It might be cleaner if I put an exhibit in through her since she's referred to her record and then go to the next witness. I'll have one question for this (inaudible) for Ms. Vernago. Uhm, a moment ago you were reading from an exhibit or from a document referred to as her attendance record.

Ms. Vernago: Right.

Mr. Frenkil: Let me show you what'll be Exhibit 3 and

ask you if that's what you're referring to?

Ms. Vernago: Yes, it is.

Mr. Frenkil: We mark this as Exhibit 3.

Hearings Examiner: I'll mark it.

Mr. Frenkil: How do you handle the question of admitting it at this juncture?

Hearings Examiner: Of what?

Mr. Frenkil: Do you want to formally - I'd like it to be admitted, as well, on the record.

Hearings Examiner: It's admitted.

Mr. Frenkil: Okay. Thank you. I have no further questions.

Hearings Examiner: All right. Next witness.

Mr. Frenkil: The next witness will be Pam Sober. Ms. Sober, could you please identify for the record what your current position is at Alexander & Alexander?

Ms. Sober: I'm the Manager of Word Processing.

Mr. Frenkil: How long have you held that position?

Ms. Sober: Uhm, about three, three and a half years.

Mr. Frenkil: Were you in that position at the time that Ms. Jefferson was terminated?

Ms. Sober: Yes.

Mr. Frenkil: Had you been in that position consecutively for the prior six to eight months or more?

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Ms. Sober: Uh, yes.

Mr. Frenkil: Could you briefly describe your duties and your functions as the manger of Word Processing?

Ms. Sober: Well, it's basically my responsibility to make sure that the department runs smoothly, the work load is taken care of in a twenty-four hour turn-around time as much as possible. And I also take care of tracking the productivity of the operators and of the departments that use our department.

Mr. Frenkil: Who in the department has the authority to hire and fire?

Ms. Sober: I do.

Mr. Frenkil: Could you briefly describe the business that Alexander & Alexander is engaged in?

Ms. Sober: Yes. We're insurance brokers. And it's very important that we get our work out on time because, like Sandy had mentioned, we work for approximately two hundred and fifty to three hundred authors and we have eleven word processing operators. And there are deadlines to be met. And if the deadlines aren't met, the insurance may not be sold to the client and then

ultimately the company could lose money.

Mr. Frenkil:

What is the normal time for turning around the work on a non-rush basis?

Ms. Sober:

Twenty-four hours.

Mr. Frenkil:

Is that policy set forth somewhere either in writing or verbally to the members of the Word Processing staff?

Ms. Sober:

It's set forth to everyone in the of-- the authors that use the department know that it's a twenty-four hour turn-around time. And if they don't get it, they complain.

Mr. Frenkil:

Before, Ms. Vernago was referring to a log is maintained where people log in the work that they've completed. Can you briefly describe for the hearings examiner how that works, what you're logging in and what you're measuring?

Ms. Sober:

Yes. We have a word processing tracking system that we had written for us that is put on a Lotus spread sheet on a computer. And what we do is we log in the work by the day it comes in and whether it's A.M. or P.M. We give it the next available job number just to give it a number as far as tracking it. We give it an ID, meaning if it's something

that's already on our word processing customer or not. We mark whether it's a rush or not a rush job, when it's due, the author, their department number and the type of job that it is.

Mr. Frenkil: Do you indicate on there how many pages have been typed or completed?

Ms. Sober: The operator, when they would go to pick up the work, they would fill their initials in. They would put down how many pages they typed and when it went out; the date and A.M. or P.M..

Mr. Frenkil: Is there a time that you discuss with operators or indicate to operators what their volume has been for a given week or a period of time?

Ms. Sober: Well basically, what I do is every week I do a sort job where I sort all the jobs out by the operator. And by week I do a productivity log. And if I ever notice that their productivity is less than the average or their productivity compared to their own productivity in a particular week is off, then I will talk to them about it then.

Mr. Frenkil: Had you ever had this discussion, a discussion on that subject with Ms.

Jefferson?

- Ms. Sober: Yes, I did, verbally. And then I also did on her yearly review.
- Mr. Frenkil: What did you tell her?
- Ms. Sober: I discussed that her productivity needed to be improved.
- Mr. Frenkil: In what way did you expect the productivity needed to be improved?
- Ms. Sober: That she would be able to produce more documents.
- Mr. Frenkil: And how did you expect her to do that? What did you tell her about that?
- Ms. Sober: Just that I needed her to be able to - I didn't feel that she was measuring up in comparison to the other operators of the department that had been there an equal amount of time as she had.
- Mr. Frenkil: To what extent was her absence or lateness a factor in your view in her productivity?
- Ms. Sober: I think it was a major view. She was late a lot of times. We had been allowed - Our department only had been allowed to work a flex schedule - a flextime schedule - where they were allowed to come in as early as 7 o'clock in the morning so that we could meet the demands

of that morning of the regular - Most people would come to work at quarter of nine - so that we could get - we would know if somebody brought a job down at 4 o'clock in the afternoon that that job could be completed and out by quarter of nine the next morning. And I counted on the people that came in at 7 o'clock to do those jobs. And that's how I would know whether to accept a job like that or not.

Mr. Frenkil: Was Ms. Jefferson one of the people working on the 7 o'clock shift?

Ms. Sober: Yes. She was supposed to be there at 7.

Mr. Frenkil: How did she know that? How did she know she was supposed to be there at 7?

Ms. Sober: She picked the hours herself.

INTERRUPTION

Hearings Examiner: Excuse me. (Inaudible).

SIDE TWO

Hearings Examiner: Side Two, Vicki Jefferson, 8908242. Go ahead, Mr. Frenkil.

Mr. Frenkil: Ms. Sober, continuing with your testimony. Uhm, let me show you, if I might, a memorandum dated April 3rd, 1989 and ask you if you've seen that before?

Ms. Sober: Yes, I have.

Mr. Frenkil: Is that your handwriting?

Ms. Sober: Yes.

Mr. Frenkil: Can you briefly describe for the - Well, let me go back, if I might. Earlier, were you present during testimony from Ms. Vernago concerning a March 31, 1989 discussion that she had with Ms. Jefferson concerning attendance problems?

Ms. Sober: Yes.

Mr. Frenkil: Can you briefly describe for the hearings examiner your understanding of whether Ms. Jefferson had attendance problems during the period from March to the time of her termination. And, if she did, what the problems were?

Ms. Sober: From when Sandy had given her that memo?

Mr. Frenkil: That's correct.

Ms. Sober: Yes. Based on this attendance record, uhm,...

Mr. Frenkil: Referring to Exhibit 3. Go ahead.

Ms. Sober: ...after March 29th - the 31st, two days later, she called in and spoke with Greg, but she had been repeatedly told not to tell Greg, but to call either me or Sandy...

Mr. Frenkil: Why couldn't she call Greg?

Ms. Sober: Because he wasn't her supervisor.

Mr. Frenkil: Now,...

Ms. Sober: She needed to call somebody in a supervisory capacity.

Mr. Frenkil: Is that written down somewhere in the company policies?

Ms. Sober: Yes, it is. In the handbook.

Mr. Frenkil: Let me show you, if I might...

Ms. Sober: And I also went over that with her on her first day of hire. I always take the employees out to lunch the first day, which I did with Vicki - explain to her the importance - that if she ever did need to call in, either a vacation day or sick time, that she had to have that approved through a supervisor; either me or Sandy. And, I also stated our policy; that if she did call in sick that she would have to call in by 2 o'clock that day to let us know whether she would be in the next day or not and gave her my home phone number, Sandy's home phone number, and then both of our work numbers on a card.

Mr. Frenkil: Let me show you briefly Exhibit 5, which purports to be the Personnel Policies & Practices Manual. Have you ever seen that before?

Ms. Sober: Yes, I have. In the Employee Handbook.

Mr. Frenkil: And it's the second paragraph that indicates that you are to notify your immediate supervisor...

Ms. Sober: Yes.

Mr. Frenkil: ...if you're gonna be out? Is that what you're referring to...

Ms. Sober: Yes.

Mr. Frenkil: ...when you said she called Greg and she shouldn't have called Greg?

Ms. Sober: Yes.

Mr. Frenkil: Now, what happened in connection with the discussion that Ms. Vernago had with Ms. Jefferson concerning that incident?

Ms. Sober: Well, basically Vicki was questioning Sandy's authority by Sandy giving her that memo to begin with. She didn't agree with excessiveness. Didn't agree with the fact that she should have signed memo. Wanted to know if she was gonna be marked late, then why she should even bother with coming to work at all.

Mr. Frenkil: Did you have concern that she wasn't accepting her responsibility in terms of her attendance and tardiness issue?

Ms. Sober: Yes. I thought she, you know, - she would repeatedly tell us, "I can't wake

up in the morning." "I can't come to work at 7 o'clock." And I asked her a few times if she wanted to change her time to a later time and she said no.

Mr. Frenkil: Was it your perception that there were, in general, issues concerning her accepting her responsibility for doing her job in terms of being there and actually performing the duties?

Ms. Sober: Yes.

Mr. Frenkil: Now, did there come a time that you talked to her about possibly trying to accommodate her need to work a different schedule or different shift?

Ms. Sober: Yes. We asked her once or twice and she said that she didn't want to work those - you know, later hours. We asked her would she rather just come into work at 8:30 or 8:45, make that her regular hours, and she said no.

Mr. Frenkil: Let me show you Exhibit 6, which is a memorandum dated April 6th and ask you if that is your signature and Ms. Jefferson's signature?

Ms. Sober: Yes.

Mr. Frenkil: Referring you to the last paragraph, would it be a fair summary that you had

been discussing with her, both in writing and verbally, the desire to accommodate her variety of medical problems?

Ms. Sober: Yes. Both myself, my supervisor, Patty Klosek, and Jane Kramer, the Human Resources Manager, at various times had spoken with her to ask her what could we do to help accommodate her more.

Mr. Frenkil: Now, would you read the last sentence, please, in terms of what would happen, at the end of this memo?

Ms. Sober: "To this end, our employees are expected to report to work on time; and continued tardiness and absences will result in termination."

Mr. Frenkil: During this same time period, did you have any other discussions with Ms. Jefferson concerning her work or her performance of her job?

Ms. Sober: Uhm, the - Just basically the times when she called in in between March and May. I think it was three or four times, here, that she called in and spoke to Greg instead of Sandy or I and said that she'd be in late for different reasons.

Uhm,...

Mr. Frenkil: What happened on April 13th, if Exhibit 3

indicates that?

Ms. Sober: That she - Vicki was away from her desk from 7:05 to 7:25 and then held a ten minute conversation after that, at which time Sandy spoke with her, asking her to please get back to work.

Mr. Frenkil: What happened on April 21st (inaudible)?

Ms. Sober: That Sandy noticed Vicki on the phone between 12 and 12:30. And then Vicki went to lunch after that.

Mr. Frenkil: The notes here in Exhibit 3 says, "Sent datagram asking her to please limit extensive calls to breaks and lunch."

Ms. Sober: Yes. That's something we can do through electronic mail on our computers.

Mr. Frenkil: So, a datagraph is a note to someone, that appears on their screen?

Ms. Sober: So, that's what Sandy did. Yes.

Mr. Frenkil: Now, what happened on April 26th, if Exhibit 3 indicates that?

Ms. Sober: Uhm, that she arrived at 10:46.

Mr. Frenkil: And did someone talk to her about that?

Ms. Sober: Well, I think Sandy spoke to her about that because it has in here that "Vicki's going to make up her time."

Mr. Frenkil: Showing you a memorandum of April 12th and ask you if your signature appears on

that memorandum?

Ms. Sober:

Yes, it does.

Mr. Frenkil:

What was the gist of the April 12th memo?

Ms. Sober:

Well, basically, uhm,...

Mr. Frenkil:

That'd be #7, I believe.

Hearings Examiner:

Yes.

Ms. Sober:

After the April 6th memo where we told her we would offer her to change her shift, she finally agreed to go ahead and change her shift to the 8:45. And we even accommodated her further because they would normally get off at 4:45 when they worked at 8:45. But, we accommodated her by letting her take only a half hour lunch and getting off at 4:15 as opposed to 4:45.

Mr. Frenkil:

There's a reference in here to diabetic comas in the last paragraph. Was there a pro-- What was happening and to what extent was A & A trying to accommodate that situation?

Ms. Sober:

Uhm, in the attendance folder - What's that, Exhibit 3, did you say?

Mr. Frenkil:

Yes. That's correct.

Ms. Sober:

Exhibit 3...up to April the 3rd, she - was the fifth time that we had had to call in an ambulance from the beginning

of the year into our office for - because of the fact that she had a diabetic coma in the office. We called her doctor. Patty Klosek and myself called her doctor to ask if there was anything else we could do to accommodate her at work.

Mr. Frenkil: And what happened was is her change in schedule, basically?

Ms. Sober: Yes.

Mr. Frenkil: All right. Now, lunch time...

Ms. Sober: Well, I had told her she could eat at her desk any time throughout the day if she wanted to.

Mr. Frenkil: You had talked with the doctor yourself?

Ms. Sober: Yes.

Mr. Frenkil: And without testifying to what he said, was it your understanding that he wanted her to eat as often as regularly as she needed to...

Ms. Sober: Right....

Mr. Frenkil: ...maintain herself?

Ms. Sober: ...Eat many times during the day which I, then, went back to her and related to her that I didn't care if she ate all day long at her desk. That was fine as long as she continued to work.

Mr. Frenkil: Okay. Now, when did Ms. Jefferson's

employment terminated?

Ms. Sober: May 26th, I think. Actually, it was on May 30th.

Mr. Frenkil: Let me ask you if you could turn to Exhibit 2 and ask if you've seen that before - the May 30th memorandum.

Ms. Sober: I don't think I have that. Yes. Okay. I saw that.

Mr. Frenkil: You heard Ms. Vernago's testimony concerning how this memorandum was created. And have you had a chance to read this memorandum prior to today?

Ms. Sober: Yes.

Mr. Frenkil: Is that an accurate reflection of the facts as you've heard them on the afternoon of May 26th?

Ms. Sober: Yeah. That's exactly what Sandy had told me on the phone that day.

Mr. Frenkil: In a prior proceeding, an affidavit was submitted from a Greg Powell. A statement of some sort of was submitted from a Greg Powell. Are you aware of that?

Ms. Sober: Yes, I am.

Mr. Frenkil: And you're aware that that statement, which I heard may, in fact, be submitted again today, suggests that Ms. Vernago

invited the individual into her office and then left and went back into her office. And only later, again, had a conversation concerning a desire to meet with Ms. Jefferson. Would that summary be consistent with what Ms. Vernago told you the day that she called you at home?

Mr. Epstein:

Objection.

Hearings Examiner:

Sustained.

Mr. Frenkil:

As best you can describe it, tell me what Ms. Vernago told you when she called you at home and what your understanding was of what happened that day.

Mr. Epstein:

Objection.

Mr. Frenkil:

She's the manager (inaudible)...

Hearings Examiner:

Overruled. She's here...

Mr. Frenkil:

Go ahead.

Ms. Sober:

By the time I got back to Sandy, it was about 3 o'clock. The incident had happened much earlier in the morning and Sandy was still very agitated at the fact that Vicki refused to go into the office when she had asked her. And she had to ask Vicki three times to please go into - She had to ask Vicki three times to come into my office so she could talk to her as opposed to talking to her in front of

the whole department. Beginning with the fact that she asked Vicki if she was on break and Vicki gave her an answer of yes and no. And then when Vicki - When she asked Vicki would you go back to work, Vicki gave her an answer, "Maybe I don't feel like it."

Mr. Frenkil:

What was the - When you completed your conversation with Ms. Vernago, did you tell her to do anything?

Ms. Sober:

No, because it was Friday before the holiday of Monday. So, I told her I wanted to get in touch with my immediate supervisor, Patty Klosek, because I felt that it was flat out insubordination and I wanted to talk to Patty about termination Vicki for that reason.

Mr. Frenkil:

Did you participate in the decision to fire Ms. Jefferson?

Ms. Sober:

Yes.

Mr. Frenkil:

Why did you, as a manager, believe it to be insubordination?

Ms. Sober:

Because, uhm, she questioned - she continually, in her employment, questioned Sandy's authority and then when Sandy gave her a direct order to get back to work, she - I mean to get back to

work and get into my office - she refused to do it.

Mr. Frenkil: To what extent, if at all, does the Employee Handbook provide for termination for insubordination?

Ms. Sober: As far as I know, insubordination is definitely grounds for termination. I don't know word for word but it basically says that.

Mr. Frenkil: Let me show you, if I might, page 22 of the Personnel Policies and Practices Handbook. Have you ever seen this handbook before?

Ms. Sober: Yes, I have.

Mr. Frenkil: Was this the booklet in effect at the time?

Ms. Sober: Yes.

Mr. Frenkil: I'd ask if you'd read the third item marked with a hyphen on that page.

Ms. Sober: "Refusal to perform work as directed or willful neglect of duty."

Mr. Frenkil: Is that what you understood happened with respect to Ms. Jefferson?

Ms. Sober: Yes, it is.

Mr. Frenkil: Had you ever had any reason to question the credibility of Ms. Vernago?

Ms. Sober: No, I didn't. If I didn't feel that she

was capable of being a supervisor, I wouldn't have promoted her to that position.

Mr. Frenkil: Did you have any reason to believe that Ms. Vernago was not telling you the truth when she gave the information on...

Mr. Epstein: Objection.

Hearings Examiner: Sustained.

Mr. Frenkil: Credibility is an essential issue here, especially with the affidavit that is gonna be submitted. (Inaudible).
Uhm,...

Hearings Examiner: Repeat your question.

Mr. Frenkil: Okay. At the time Ms. Vernago was talking to you in that 3 o'clock phone call on Friday, the 26th, did you have any reason to question her credibility...

Ms. Sober: No.

Mr. Frenkil: ...Or that she wasn't telling the truth at that time?

Mr. Epstein: Objection.

Hearings Examiner: Overruled cause she's here.

Ms. Sober: No. I didn't have any reason to - She basically just repeated to me what had happened.

Mr. Frenkil: Now, did Ms. Vernago indicate to you what she testified to earlier that Ms.

Jefferson made some comment about not wanting Pam to call her into her office on Tuesday?

Ms. Sober: Yes. She - Sandy told me that Vicki said to her, "I don't want Pam calling me into her office on Tuesday to discuss this."

Mr. Frenkil: What was your view of that statement?

Ms. Sober: I felt Vicki had no right to make that statement at all. If I chose as manager of the department to discuss a problem that came up in the department, it was my right to call her into my office and discuss it.

Mr. Frenkil: Did that comment have any impact on your analysis of whether or not she was insubordinate?

Ms. Sober: It certainly did.

Mr. Frenkil: In what way?

Ms. Sober: I felt like she was telling me, now, what to do and questioning my authority.

Mr. Frenkil: When was the decision made to terminate the employment of Ms. Jefferson?

Ms. Sober: As far as Alexander & Alexander were concerned?

Mr. Frenkil: As far as you were concerned.

Ms. Sober: As far as I was concerned, when - At the end of the conversation with Sandy on

Friday at 3 o'clock.

Mr. Frenkil: Why didn't you call Ms. Jefferson right then and tell her she was fired?

Ms. Sober: Because at Alexander & Alexander, we must go through the Human Resources manager before we can fire anybody. And she wasn't - I don't think she was in town that day. She wasn't at work that day.

Mr. Frenkil: All right. And when was the next day that you were back to work?

Ms. Sober: Tuesday.

Mr. Frenkil: And that's the day of the memorandum? That's Exhibit # - May 30th?

Ms. Sober: Yes. As a matter of fact, it was before work hours, even, that I got in touch with the Human Resources manager and told her the problem and that I felt that Vicki should be terminated on the grounds of insubordination. So, it was first thing in the morning when I got there Tuesday.

Mr. Frenkil: What, if any, other factors did you consider in addition to the events of May 26th in your decision to terminate Ms. Jefferson?

Ms. Sober: Her productivity was very low. Her refusal to, when she would be calling in,

to speak to a supervisor or manager, her constant questioning of Sandy as her supervisor. The fact that when we spoke with her doctor, he told us - We explained to him the fact that she had used up all her eight sick days by February. And that we had a concern about that and her work. And was there any possibility she could make appointments in the evening. He said yes. And she continued to make appointments during the day so that she would be late to work.

Mr. Frenkil:

At the time that Ms. Jefferson was terminated, who let her know that that was gonna happen?

Ms. Sober:

Uhm, basically, what happened was, I called her into my office and I told her based - The first thing I said to her was based on what happened in here on Friday, you're being terminated from the company. And I told her to get her things together from her desk and then she had to go down to Human Resoures. And then they handled it from that point on.

Mr. Frenkil:

Did Ms. Jefferson say anything to you in

response to your notification to her that she was being fired?

Ms. Sober: She asked me did I know what happened on Friday. And I said I most certainly did and that's why she was being terminated.

Mr. Frenkil: Did she say anything else?

Ms. Sober: No. Oh! When I got back to her desk, I was waiting for her to clean her things off - get her personal belongings together and I noticed there were two jobs laying on her desk. And I asked her are these jobs that you haven't started yet. And she didn't answer me. And I said to her, excuse me, Vicki, but I asked you a question. And she said, "If I'm not working here any longer, I don't have to answer any of your questions." And I said fine and took her down to Personnel.

Mr. Frenkil: (Inaudible) to Exhibit 3. Exhibit 3 - this is the attendance record.

Ms. Sober: Uhm um.

Mr. Frenkil: On, uhm, - I'm referring to the second page. It refers to a March 9th, 1989 incident. Can you briefly describe what happened?

Ms. Sober: On March 9th?

Mr. Frenkil: Referring to the second page of Exhibit 3.

Hearings Examiner: Why...

Ms. Sober: Oh, okay.

Mr. Frenkil: It's marked at the top of the page.

Hearings Examiner: ...Why is that specifically relevant?

Mr. Frenkil: (Inaudible). I hate to put words in her mouth (inaudible).

Ms. Sober: On March 9th she arrived at 8:35. Her regular time to come in was at 7. She had two hours and fifteen minutes of comp time. So we let her use that towards the time she needed to make up.

Mr. Frenkil: Did Ms. Jefferson call anybody to say she was coming in later that day?

Ms. Sober: No. She just came in.

Hearings Examiner: So, in effect, it was excused because you gave her the comp time?

Mr. Frenkil: Well,...

Ms. Sober: Well, I thought we were just being nice about it.

Hearings Examiner: Well, that's what I'm saying...

Ms. Sober: I don't equate that with...

Hearings Examiner: ...It's an excused because you're not docking her. You're...

Ms. Sober: ...I don't equate that with that. I felt I was just being nice. Instead of

docking her the pay I let her use the time she had.

Mr. Frenkil: Did Ms. Jefferson come to anyone when she arrived at work to indicate that she'd been late?

Ms. Sober: No. That was another problem we had with her. Sandy had, on more than one occasion, asked her when she got to work to please let her know that she was there so that Sandy would know that she had arrived. And after the second or third time of Sandy telling her that, Vicki said, "Well, you're not giving me enough time to get my shoes off and get my things together before I come to you." So, Sandy said okay. Fine. And at that point just said okay, I'll wait until she gets her shoes off and sat there and waited until she got her shoes off and got her things together and she still never came to Sandy to tell her.

Mr. Frenkil: Was that the only time that kind of thing happened with her?

Ms. Sober: No. It happened continually.

Mr. Frenkil: No further questions.

Hearings Examiner: Mr. Epstein?

Mr. Epstein: Ms. Sober, I want to show you a letter

from Dr. Victor Khouzami. Have you seen that before?

Mr. Epstein: I have...

Ms. Sober: Yes, I did. Oh, I'm sorry. You weren't finished?

Mr. Epstein: Yes, I was.

Ms. Sober: Oh, okay. Yes.

Mr. Epstein: I was simultaneously showing it to Mr. Frenkil. Okay. Do you know when, approximately, you received that letter?

Ms. Sober: I think it must have been somewhere around April 6th because I think that's when we wrote a letter back to her. I believe this was the one that she gave us that was an undated - I don't have it right in front of me - but that she gave an undated cover letter to this. And then we responded to her on April 6th, (inaudible) your letter undated.

Mr. Epstein: Okay. So you - In other words, you were aware of the information contained in this letter from, at least, from April 6th onwards, is that correct?

Ms. Sober: Uhm, uhm,...

Mr. Epstein: Well, up...

Ms. Sober: Because it was...

Mr. Epstein: Let me rephrase that. Let me rephrase

that.

Ms. Sober: Okay.

Mr. Epstein: You received that letter at some point before April 6th, is that correct?

Ms. Sober: Correct.

Mr. Epstein: Okay.

Ms. Sober: Which prompted us to call her doctor and ask if he could give her evening appointments.

Mr. Epstein: Okay.

? (Inaudible).

Hearings Examiner: Am I suppose to know what's in the letter?

Ms. Sober: Oh!...

Mr. Epstein: I'm sorry. I was getting ready to introduce it. Uh, I'd like to introduce it at this time...

Hearings Examiner: All right.

Mr. Epstein: ...as Claimant's Exhibit 1. Sorry.

Hearings Examiner: So the doctor is suggesting she be excused for coming in late and she might need to leave work early to keep appointments. Is that a fair summary?

Mr. Epstein: Yes.

Hearings Examiner: Okay.

Mr. Epstein: And directing your attention to this Exhibit #2, I believe - it may be Exhibit

#3 - this handwritten list...

Ms. Sober: Yeah.

Mr. Epstein: ...There are no entries between April 26th and May 24th, correct?

Ms. Sober: Right. (Inaudible).

Hearings Examiner: If they're not there, they're not there.

Ms. Sober: Yes.

Mr. Epstein: Okay.

Ms. Sober: I was also looking at the front to see if there was any - There's usually in the front (inaudible)...

Hearings Examiner: He was referring to that list, though.

Ms. Sober: (Inaudible).

Mr. Epstein: Okay. All right. I have no other questions.

Mr. Frenkil: I have follow-up questions, if I might, briefly. Referring you to the April 6th memorandum, which is Exhibit 6 from you to Vicki Jefferson, is that the memorandum where you indicated to Mr. Epstein that you had talked to her doctor after getting that letter?

Ms. Sober: Yes.

Mr. Frenkil: Uhm, to save about five questions, would you tell me briefly, looking at the top part of the second page - would you read what the doc-- what your memo says he

doctor told you, beginning with, "Vicki, you get off work at..." at the top of the page.

Ms. Sober:

Okay. "Vicki, you get off work at 2:30 p.m. and the doctor told us that he has office hours one night a week until 6 o'clock. He also told us that at thirty-two weeks of your pregnancy, you will have to come once a week in the morning for a stress test and other tests. Since we know that you will be coming to work late for these appointments at thirty-two weeks, we will not allow you to come in late or leave early for your regular doctor appointments before this time. Dr. Khouzami said..." And then I quoted what he said. "I've talked to Vicki many times and the bottom line is Vicki wants to do what Vicki wants to do. I don't have any other suggestions for you to accommodate Vicki."

Mr. Frenkil:

That's all I have for her.

Mr. Epstein:

No questions.

Hearings Examiner:

Mr. Frenkil, do you have another witness?

Mr. Frenkil:

No other witnesses, Your Honor.

Hearings Examiner:

Good.

Mr. Frenkil:

Thank you. (Inaudible).

Hearings Examiner: Uhm, Mr. Epstein, I'll be glad to hear from the claimant if you wish.

Mr. Epstein: All right. Ms. Jefferson,...

Hearings Examiner: (Inaudible).

Mr. Epstein: Okay....Ms. Jefferson, would you identify yourself for the record, please?

Ms. Jefferson: Vicki Jefferson.

Mr. Epstein: All right. And - Just by way of introduction, last spring, up until May 30th, 1989, you were working for Alexander & Alexander, is that correct?

Ms. Jefferson: Yes.

Mr. Epstein: As a word processor?

Ms. Jefferson: Yes.

Mr. Epstein: All right. And, you were pregnant?

Hearings Examiner: Excuse me.

CASSETTE #455

Hearings Examiner: Side Three, Vicki Jefferson. Go ahead, Mr. Epstein, and repeat the question.

Mr. Epstein: All right. Uh, up until May 26th, 19-- Up until May 30th, 1989, you were working as a word processor at Alexander & Alexander, is that correct?

Ms. Jefferson: Yes.

Mr. Epstein: And you were pregnant at that time?

Ms. Jefferson: Yes.

Mr. Epstein: And, were you having complications as a

result of your pregnancy?

Ms. Jefferson:

Yes.

Mr. Epstein:

And what did those involve?

Ms. Jefferson:

I was experiencing low sugar level.

Mr. Epstein:

And what did that - What was the result of that? What had that effected to the extent of your work at Alexander & Alexander?

Ms. Jefferson:

I would be unconscious.

Mr. Epstein:

You would pass out?

Ms. Jefferson:

Yes.

Mr. Epstein:

And how many times did that happen, if you recall?

Ms. Jefferson:

I can't remember how many but it may have been maybe like four or something like that.

Mr. Epstein:

All right. And, did you have to be taken to the hospital by ambulance on those occasions?

Ms. Jefferson:

Sometimes.

Mr. Epstein:

All right. Now, were you ever late for work as a result of problems connected with the diabetes?

Ms. Jefferson:

Yes.

Mr. Epstein:

And why was that?

Ms. Jefferson:

I was experiencing low sugar levels while I was sleeping and it would cause me to

oversleep. Well, I wasn't sleeping but I was unconscious because of low sugar level.

Mr. Epstein: Okay....

Ms. Jefferson: And that would allow me to be late for work.

Mr. Epstein: All right. And in turn, were you told by your doctor anything about being able to control these by - these problems by the way you were eating?

Ms. Jefferson: Yes. It could have been controlled by the way I was eating, but at the beginning of the first trimester, it's very hard to keep it controlled. And I was eating like I was supposed to and it was still coming down. That's why I got the doctor's letter - the doctor's statement - to explain what was going on because I could still eat and it would still drop.

Mr. Epstein: All right. And, on occasions when you were late for work, would you call in to report that, that you were going to be late?

Ms. Jefferson: Yes. I called in.

Mr. Epstein: And were there ever any occasions when you talked to somebody other than your

manager or your supervisor to tell them that you were gonna be late?

Ms. Jefferson: Yes. Because Greg Powell was - He was in at that time. My supervisors weren't in at that time. I came in before my supervisors, which was at 7 o'clock.

Mr. Epstein: Okay. And were you ever asked to contact your supervisors directly...

Ms. Jefferson: Yes. From the...

Mr. Epstein: ...to say you were gonna be late?

Ms. Jefferson: ...letter.

Mr. Epstein: And...

Ms. Jefferson: After I got that letter.

Mr. Epstein: All right. And - Now, which letter are you referring to? Are you referring to the letter of - Several letters have been introduced. Give me a moment, please. There are a lot of letters here.

PAUSE

Mr. Epstein: That'd be the letter of April - the memorandum of April 6th that was...

Ms. Jefferson: Yes.

Mr. Epstein: ...that was discussed. Okay. And did you, then, comply with the request that you report to your supervisors when you were gonna be late?

Ms. Jefferson: Yes.

Mr. Epstein: Now, concerning doctor's appointments, were there ever times when you left work during the day or came in late as a result of having to go to the doctor?

Ms. Jefferson: Uhm,...

Mr. Epstein: For scheduled appointments?

Ms. Jefferson: ...one time.

Mr. Epstein: Okay. And was that in connection with your pregnancy?

Ms. Jefferson: Yes.

Mr. Epstein: Now, you've heard some testimony concerning being - that your doctor allegedly told Ms. Sober that you could make appointments at night. Did you ever do that?

Ms. Jefferson: Yes.

Mr. Epstein: And after you were asked by your supervisors to limit your appointments to the evening, did you continue to make appointments during the day?

Ms. Jefferson: It was one, because he didn't have late evening appointments.

Mr. Epstein: All right.

Ms. Jefferson: And I had to take that appointment during the day.

Mr. Epstein: All right. And do you recall approximately how long that was before

the date that you were terminated?

Ms. Jefferson:

Maybe about a month before.

Mr. Epstein:

Okay. Now, you made some - You made a change in your work schedule to accommodate your medical condition, is that correct?

Ms. Jefferson:

Yes.

Mr. Epstein:

And from the time that you made that change, did you continue to experience problems with lateness?

Ms. Jefferson:

No.

Mr. Epstein:

All right. Now, were you ever cautioned by any of your supervisors concerning making too many personal phone calls or being away from your desk too often prior to May 26th?

Ms. Jefferson:

Uh, yes.

Mr. Epstein:

And what was your response at that time? How did - Not what did you say, but what did you do after being told about that?

Ms. Jefferson:

I went back to work.

Mr. Epstein:

All right. And, uh, I'm now direct your attention to the morning of May 26th, 1989. First of all, had you missed work earlier that week?

Ms. Jefferson:

I believe so cause I was in a car

accident.

Mr. Epstein: And did you receive any medical treatment as a result of being in that accident?

Ms. Jefferson: Yes.

Mr. Epstein: And, uh, what did that treatment consist of, very briefly?

Ms. Jefferson: Uhm,...

Mr. Epstein: Did you go to the doctor, go to the hospital?

Ms. Jefferson: Yes. I went to the hospital.

Mr. Epstein: What hospital did you go to?

Ms. Jefferson: GBMC.

Mr. Epstein: Okay. And what kind of injuries did you suffer as a result of that accident?

Ms. Jefferson: I had soreness in my stomach.

Mr. Epstein: Okay....

Hearings Examiner: Excuse me. Was your obstetrician's office also at GBMC?

Ms. Jefferson: Yes.

Hearings Examiner: He didn't have any other office? I mean did you have to go there to see him?

Ms. Jefferson: Yes.

Hearings Examiner: Okay. Go ahead.

Mr. Epstein: All right. Now, uh, you reported back to work on May 26th, is that correct, that Friday morning?

Ms. Jefferson: Yes.

Mr. Epstein: Okay. And what happened when you came to work that morning? First of all, what time did you get there, if you recall?

Ms. Jefferson: 8 o'clock, I believe. It was like 8, I think.

Mr. Epstein: Okay. And what time, what time did your shift begin at that time?

Ms. Jefferson: 8.

Mr. Epstein: Okay. And what happened after you came to work? What did you do?

Ms. Jefferson: I came in and I was - I came in as a regular day and was working. And I was over at Greg Powell's desk and Sandy had asked me to go back to work...

Mr. Epstein: Okay. Well, what were you doing at Greg Powell's desk?

Ms. Jefferson: I was talking to Greg.

Mr. Epstein: And about what time in the morning was this, if you recall?

Ms. Jefferson: About 10 o'clock.

Mr. Epstein: And how long had you been at his desk?

Ms. Jefferson: I had just gotten there. I guess about five minutes.

Mr. Epstein: Okay. And had you been away from his desk - Excuse me - away from your desk and at his desk earlier that morning?

Ms. Jefferson: Uhm, I don't - I don't think so.

Mr. Epstein: Okay. Had you been working that morning?

Ms. Jefferson: Yes.

Mr. Epstein: Do you remember what that work consisted of?

Ms. Jefferson: No. I can't remember that.

Mr. Epstein: Okay.

Ms. Jefferson: *I mean we basically just typed letters and listened to tapes and typed - I can't - I don't remember.*

Mr. Epstein: Well, do you remember whether that morning you were doing that kind of work, typing or listening to tapes?

Ms. Jefferson: Yes.

Mr. Epstein: Okay. And, uh, when you were at Greg Powell's desk and Sandy Vernago came over, what happened?

Ms. Jefferson: She had - She had asked me to go back to work. And I told her I could go back to work. And I was explaining to her that I was being treated unfairly because at that time other pe-- the whole office was talking and not doing their work, as well. And she had asked me to come into her office to continue the conversation and I said no, I don't want to continue it. And I went back to my desk. And she...

Mr. Epstein: Now, when she asked you to come into her office to continue the conversation, how did you - what did you understand her to be doing? Did you understand that to be a command?

Ms. Jefferson: No.

Mr. Epstein: How did you take that?

Ms. Jefferson: I took it as we could go in her office so we could continue the conversation. And I didn't want to because I was being treated unfairly at that point.

Mr. Epstein: And what happened then?

Ms. Jefferson: And I went back to work.

Mr. Epstein: And what did she do at that time?

Ms. Jefferson: She went back to work and then she came back...

Mr. Epstein: Where did she go? When she went back to work, where did she go?

Ms. Jefferson: Back to her work station.

Mr. Epstein: Okay. Is that near Greg Powell's desk?

Ms. Jefferson: It's across - It was across.

Mr. Epstein: About how far from Greg Powell's desk did she go?

Ms. Jefferson: I guess, I guess from here to the wall, I guess. I can't give you feet or anything.

Mr. Epstein: All right. And, indicating for the

record about ten feet. Okay. And what happened then? How far away was your work station from Greg's desk?

Ms. Jefferson: I'll say it was one foot. One - I guess...

Mr. Epstein: Did you have adjacent desks or adjacent work stations?

Ms. Jefferson: No. Cubicles were separating us.

Mr. Epstein: Okay. But, I mean was your cubicle next to his cubicle?

Ms. Jefferson: Yes.

Mr. Epstein: Okay. And then you went back to your cubicle?

Ms. Jefferson: Yes.

Mr. Epstein: And what happened, then?

Ms. Jefferson: I went - Oh! She came back to my desk and told me to come into the office. And that's when I went.

Mr. Epstein: Okay. And how many times altogether did she ask you to come into her office?

Ms. Jefferson: Twice.

Mr. Epstein: Okay. And the first time she asked you to come into her office, what was her tone of voice, if you recall?

Ms. Jefferson: It was...

Mr. Epstein: Was it conversational or loud? Or, do you recall?

Ms. Jefferson: I guess conversational.

Mr. Epstein: Okay. And the second time she asked you, when she came into your cubicle, what was her tone of voice at that time?

Ms. Jefferson: It was more of a demand. She sounded like she was mad at that time.

Mr. Epstein: All right. Do you remember about how much time passed between the time you went in your cubicle and the time she came in and asked you to come into her office?

Ms. Jefferson: A couple of minutes cause I had started working again.

Mr. Epstein: Okay. After you went into her office, what happened there? What was the conversation in her office, if you remember?

Ms. Jefferson: I remem-- the main point was, she was telling me I needed to mind - the problem was that people needed to mind their own business and if I needed to - if I had any questions (Now, what was it?) - she asked me if I had any problems, to go to Pam Sober with them. That's what she was saying.

Mr. Epstein: And...

Ms. Jefferson: I wasn't warned or anything as far as I

was using gross misconduct or anything. I went back to work after I left her office.

Mr. Epstein: Well, do you remember what you said to her in her office?

Ms. Jefferson: No. I didn't say a whole lot. I just listened to her.

Mr. Epstein: All right. Well, did you ask her anything concerning not coming to talk to Pam about this incident the following Tuesday?

Ms. Jefferson: Yes. I didn't want to continue the conversation because I was being treated unfairly. And I didn't see what was the purpose to continue the conversation when I discussed it with Sandy.

Mr. Epstein: Okay. And you then went back to work?

Ms. Jefferson: I went back to work.

Mr. Epstein: All right. And, were there any further incidents the remainder of the day?

Ms. Jefferson: No.

Mr. Epstein: Okay. Uh, at this time, I'm going to introduce a letter from Gregory Powell...

Mr. Frenkil: I'm going to object on a couple of grounds. First of all, there's no testimony to support the document. It's unsworn. And the individual is certainly

somebody he could have had here today.
We can't cross examine the guy
(inaudible).

Hearings Examiner: Primarily, because it's unsworn.

Mr. Epstein: It is sworn.

Hearings Examiner: It is?

Mr. Epstein: It is sworn.

Hearings Examiner: Let's see. But...

Mr. Frenkil: It's certified to and not notarized.
It's not sworn to. There's no oath taken
as part of that document - as part of the
statement at all. I'd like to have the
witness here (inaudible)...

Hearings Examiner: (Inaudible).

Mr. Epstein: I would like to point out the fact that
the rules of evidence are not part of
this proceeding. That other hear say has
been admitted. And...

Hearings Examiner: Yeah. But he doesn't have the ability to
challenge the contents of the document.
But, you had the ability to challenge
Sandy...

Mr. Epstein: I would also like to point out the fact
that at the beginning of this, that Mr.
Frenkil is familiar with this document.
He has seen it before today. And that at
the beginning of this hearing, I

announced my intention of introducing this and said that I did not - was not requesting a continuance in order to have Mr. Powell here. And a summons was issued for him, whether the zip code is correct or not. At that time, Mr. Frenkil did not indicate that he was gonna have any objection to introducing this statement.

Hearings Examiner: Well, there was some - I mean is there something in there - I haven't read it - that was not discussed previously?

Mr. Epstein: It contradicts what Ms. Vernago says. That's the purpose...

Hearings Examiner: Well then...

Mr. Epstein: And it corroborates what my client says. That's the purpose for which I'm introducing it.

Hearings Examiner: Then all I can do is to continue the hearing and you try to get good service.

Mr. Epstein: Fine. If this document will not be admitted, then I'll request the hearing be continued.

Hearings Examiner: Cause he can't challenge the statements. And they are basic rules for fair play and procedure. I will do that. Do you want to finish testimony? Do you have

anything else?

Mr. Epstein: No. I'm through.

Hearings Examiner: All right. Do you want to reserve argument for a later date or argument now?

Mr. Epstein: Well, Mr. Frenkil may wish to cross examine.

Mr. Frenkil: I'd (inaudible) to cross...

Hearings Examiner: Yeah. I just want to get that point. Would you want to reserve argument for a later time, after your witness...

Mr. Epstein: I think that would be - I think that would be make sense.

Hearings Examiner: Okay.

Mr. Frenkil: That'd be sufficient for everybody, I'd think.

Hearings Examiner: Yeah. Okay. Cross examination?

Mr. Frenkil: Ms. Jefferson, my name is Steve Frenkil. I'm an attorney for the company. Do you recall - You were here during the testimony of the witnesses for the company today and you heard their testimony, is that right?

Ms. Jefferson: Yes.

Mr. Frenkil: Do you remember Pam mentioning that during the first - beginning of your employment, she met with you and talked

to you about various company procedures and policies?

Ms. Jefferson: Yes.

Mr. Frenkil: Do you remember that Ms. Sober indicated to you in the beginning of your employment that if you were gonna be out sick or late, you should call your immediate supervisor?

Ms. Jefferson: Yes.

Mr. Frenkil: Okay. And, in fact, you were told that in the beginning of your employment, isn't that right?

Ms. Jefferson: Yes.

Mr. Frenkil: And you got a copy of the employee handbook, didn't you?

Ms. Jefferson: Yes.

Mr. Frenkil: In fact, you signed a little form saying that you got a copy of that handbook, right?

Ms. Jefferson: I believe so.

Mr. Frenkil: And that employee handbook had a policy right in it that said that you should call your immediate supervisor if you're gonna be out or if you're gonna be late, isn't that right?

Ms. Jefferson: Yes.

Mr. Frenkil: You knew Greg Powell wasn't your

immediate supervisor, isn't that right?

Ms. Jefferson:

Yes.

Mr. Frenkil:

But, at least on one occasion to let him know that you were gonna be late?

Ms. Jefferson:

Yes. I had to be in at 7 o'clock and he was in at 7. We were-- it was three people that came in that morning.

Mr. Frenkil:

You didn't call back to talk to Sandy or Pam that day, did you?

Ms. Jefferson:

No. I was on my way to work.

Mr. Frenkil:

What day did you get in that day, do you - What time did you get in that day, do you remember?

Ms. Jefferson:

I can't remember.

Mr. Frenkil:

Uhm, how long have you known Greg Powell?

Ms. Jefferson:

Since I've been an employee there.

Mr. Frenkil:

Do you remember testifying at a prior hearing when your unemployment case was at issue here once before? Do you remember testifying that you and Mr. Powell were friendly outside of work?

Ms. Jefferson:

No. I did not mention anything like that?

Mr. Frenkil:

You and Mr. Powell aren't friendly outside of work?

Ms. Jefferson:

I don't see him outside of work, if that's what you mean.

Mr. Frenkil: As a friend you don't see him outside of work?

Ms. Jefferson: No. I just see him at work. He's just a friend at work.

Mr. Frenkil: He's a friend at work. And you testified in the prior hearing, didn't you - and Ms. Sober was present at the time - that you talked to Mr. Powell about your personal matters on occasion at work? Is that true?

Ms. Jefferson: Yes.

Mr. Frenkil: Uhm, you would consider him a friend?

Ms. Jefferson: Yes. He's a friend.

Mr. Frenkil: You knew you had a problem with absences and tardiness, isn't that true, during a period in 1989 prior to the time that your employment was terminated?

Ms. Jefferson: Yes.

Mr. Frenkil: And you had received a memo from Ms. Sober telling you that if the problem persisted, you'd be terminated, isn't that right?

Ms. Jefferson: Yes.

Mr. Frenkil: And you also had been told by - in April of 1989 by Sandy that she had noticed you on the phone and that she had to send you a datagram to tell you to get back to

work, isn't that correct?

Ms. Jefferson:

She's done that before.

Mr. Frenkil:

And was she telling the truth when she sent you - When she sent you the datagram, was she being accurate in indicating to you that you needed to get back to work. At the time you received the datagram, you, in fact, were not working?

Ms. Jefferson:

Well, I mean I can't remember the incident that you're talking about, but I had received a datagram stating to go back to work but - I mean I don't remember what incident you're talking about.

Mr. Frenkil:

During the year...

Ms. Jefferson:

I can't answer that.

Mr. Frenkil:

I'm sorry. Did you finish?

Ms. Jefferson:

Yes.

Mr. Frenkil:

...During the year that you were fired by the company, can you estimate how many times you received a datagram from Sandy or someone else to tell you to go back to work?

Ms. Jefferson:

I remember getting it, maybe, once.

Mr. Frenkil:

You don't remember other occasions?

Ms. Jefferson:

No.

Mr. Frenkil: Now, when Mr. Epstein was asking you questions about what happened on the day of May 26th, the day that - the last full working day before you were fired, on that Friday, you indicated that the whole office was talking and not doing work. You mentioned that to Sandy, isn't that right?

Ms. Jefferson: Yes.

Mr. Frenkil: Can you describe what the whole office was doing as you meant it when you said that?

Ms. Jefferson: They were walking around, talking, and things like that.

Mr. Frenkil: Was it everybody?

Ms. Jefferson: I saw everybody.

Mr. Frenkil: Did that include you?

Ms. Jefferson: I saw people on the other side of the room - on my side of the room. That's how I knew they weren't working and I could see them talking.

Mr. Frenkil: Did that include you, as well?

Ms. Jefferson: Yes, but I wasn't up and moving around. I was at my desk.

Mr. Frenkil: Weren't you, in fact, standing up at Greg Powell's desk at the time that Sandy came up to you the first time?

Ms. Jefferson: Yes.

Mr. Frenkil: So, you really weren't at your desk during that point, right?

Ms. Jefferson: No.

Mr. Frenkil: How many other times that morning were you up and around other than the time that Sandy came up to you?

Ms. Jefferson: I can't remember getting up when I was talking to Greg.

Mr. Frenkil: Is it possible there were some other times, too, that morning?

Ms. Jefferson: No. I believe I was sitting down.

Mr. Frenkil: So, were you doing work sitting down or talking on the phone sitting down?

Ms. Jefferson: I was - I had - I did make some phone calls and I was working.

Mr. Frenkil: Uhm, Ms. Vernago, in her memo that we referred to before, this morning, it was a typed memo she talked about writing after her meeting with you, she said, "I noticed from approximately 8:45 to 10:35 that Vicki was on and off the phone and away from her desk alot." Would that be a generally accurate statement that for about that hour and forty-five minute period you were on and off the phone and away from your desk alot?

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Ms. Jefferson: No.

Mr. Frenkil: Were you on and off the phone alot during that period, though?

Ms. Jefferson: No. I was working. And I was on the phone but not that often, where...

Mr. Frenkil: And you...

Ms. Jefferson: ...I mean not a whole hour, if that's what you mean. No.

Mr. Frenkil: Half an hour, maybe?

Ms. Jefferson: No. I wasn't constantly on the phone, having long conversations. No.

Mr. Frenkil: How many conversations would you say you had during that hour and a half period - hour and forty-five minute period, between 8:45 and 10:45?

Ms. Jefferson: I have no idea how many. It could have been one. Because I don't know.

Mr. Frenkil: You don't recall?

Ms. Jefferson: No.

Mr. Frenkil: If Sandy recalls that you had numerous ones, you would have no basis for contradicting that today, would you?

Ms. Jefferson: No. Uhm, I would contradict it because I wasn't on the phone that - I mean - that often where I needed to be - That didn't have to be brought to my attention; that I was on the phone that long.

Mr. Frenkil: So, as I understand it, while the whole office was talking and moving around, not doing their work, you were the exception. You were at your desk. And with the exception of one phone call, you were working real hard?

Ms. Jefferson: No. I'm not gonna say that, either. I wasn't...

Mr. Frenkil: Okay. Could you explain what you were doing?

Ms. Jefferson: I was working, but I was - I was working that day but the other employees weren't working, as well, but I was the one that was singled out, saying get back to work. In the meantime, the other employees weren't working. That's what the whole point is. It's not that I was the only one not working or I was the only one on the phone. That's not the issue.

Mr. Frenkil: Were you offended that Sandy singled you out like that?

Ms. Jefferson: Yes. And I told her that I felt like I was being treated unfairly. That's why when she asked me to go into the office, I said no because I was being treated unfairly. She should have had a meeting

with everyone, not just me.

Mr. Frenkil: Your feeling was that she really wanted to talk to you alone and you didn't want to do it, is that right?

Ms. Jefferson: Yes.

Mr. Frenkil: And you knew by telling her no that you were letting her know that you weren't gonna do something that you knew she wanted you to do, isn't that right?

Ms. Jefferson: No.

Mr. Frenkil: What was your understanding as to why she wanted you to come into the office?

Ms. Jefferson: To continue the conversation that we were having as far as me being treated unfairly.

Mr. Frenkil: And you testified earlier that you didn't want to continue that conversation.

Isn't...

Ms. Jefferson: No.

Mr. Frenkil: ...that what you said before?

Ms. Jefferson: I didn't want to continue it.

Mr. Frenkil: And you knew that she wanted you to continue it, isn't that right?

Ms. Jefferson: After the second time...

Hearings Examiner: Well, she already answered.

Mr. Frenkil: (Inaudible)...

Ms. Jefferson: ...the second time I knew she wanted me

to come in.

Mr. Frenkil: During this period, didn't Greg indicate to you, either by motioning or touching your arm, to drop it and say, "Just drop it and let's get back to work"?

Ms. Jefferson: I believe so.

Mr. Frenkil: Do you remember Ms. Vernago telling you that she wasn't at liberty to discuss with you what the situation was with other employees but she wanted to talk with you about your situation?

Ms. Jefferson: Uhm, no. No. She...

Hearings Examiner: What, you didn't remember or she didn't say it? Which?

Ms. Jefferson: No. It wasn't that she needed to talk to me about my situation. She was, in general, stating that everyone needed to mind their business. She wasn't just pointing out me.

Mr. Frenkil: And didn't she say to you that - Didn't you, in fact, tell her that you weren't the only one not doing your work at that point in time? And that's the point you made before.

Ms. Jefferson: Yes. When she came to my desk...

Mr. Frenkil: Okay. And...

Ms. Jefferson: ...To Gregory Powell's desk.

Mr. Frenkil: And didn't she basically tell you that she wasn't interested in talking about everybody else; she wanted to talk about you?

Ms. Jefferson: No.

Mr. Frenkil: What did she say in response to your comment that you didn't want to meet with her right then?

Ms. Jefferson: She went back to work and I went back to work.

Mr. Frenkil: And she said nothing else?

Ms. Jefferson: She came back later...

Mr. Frenkil: Prior to coming back, are you telling me that she said to you that she wanted to talk to you in the office and you said no. And she quietly just walked away and accepted that?

Ms. Jefferson: Yes, cause I went back to work and she went back to work.

Mr. Frenkil: Was she mad or angry at the time?

Ms. Jefferson: The second she was angry. That's when I went into her office.

Mr. Frenkil: The first time you accused her of being unfair, she was relaxed and calm?

Ms. Jefferson: Well, I won't say relaxed, but she was calm.

Mr. Frenkil: And did she agree with you that she was

being unfair?

Ms. Jefferson:

No.

Mr. Frenkil:

Did she tell you that she agreed?

Ms. Jefferson:

No.

Mr. Frenkil:

Did she tell you she disagreed?

Ms. Jefferson:

No.

Mr. Frenkil:

Now, you heard testimony today from Sandy and Pam that - specifically Sandy - that you told her that you don't want to hear on Tuesday that Pam wants to talk to you in Pam's office. Do you remember hearing that testimony?

Ms. Jefferson:

Yes.

Mr. Frenkil:

Do you remember saying that to Sandy?

Ms. Jefferson:

Yes. That I didn't want to continue the whole thing. I didn't want to talk about it anymore.

Mr. Frenkil:

And you said that even when you were in Pam's office meeting with Sandy, isn't that right?

Ms. Jefferson:

Excuse me?

Mr. Frenkil:

After you were in Pam's office, meeting with Sandy, that's when you made the comment to Sandy that, "I don't want to hear from Pam about this next week," right?

Ms. Jefferson:

I didn't want to discuss it any

further. You keep on asking me the same questions.

Hearings Examiner: She answered it. I think you can let that go.

Mr. Frenkil: What did you mean when you told Sandy that you didn't want to discuss it any further?

Ms. Jefferson: I didn't want to discuss it any further. What she had to say, she should have told me right then and there in the office. I didn't think that we needed to continue discussing the conversation when it happened during that same day.

Mr. Frenkil: And my question for you is, when you were in Pam's office meeting with Sandy that afternoon - later that morning, you made a comment, didn't you, referring to the fact that you didn't want to have to discuss this again next week with Pam, isn't that right?

Ms. Jefferson: No. I didn't say I didn't want to. I just didn't want to continue it anymore. I mean whatever she had to say, she could have told me right there.

Mr. Frenkil: Wasn't it a common practice for Pam, the Manager, to follow up on issues that employees were involved with the

supervisor, to meet with them or talk with them or help them?

Ms. Jefferson: If there's a problem, but I didn't feel like it was a serious enough problem where I needed to talk to Pam about it when it was between me and Sandy. And it's just that we were having a disagreement as far as what had happened on that day.

Mr. Frenkil: (Inaudible).

Hearings Examiner: I'll turn the tape.

SIDE TWO

Hearings Examiner: Side Four, Vicki Jefferson, 08242.

Mr. Frenkil: Prior to, prior to May 26th, when you were meeting - Strike that - Prior to May 30th, when you were told you were terminated by Pam, you had been told by - you had been threatened by management that you might be terminated if some aspects of your performance didn't improve or your attendance didn't get better, isn't that correct?

Ms. Jefferson: Could you repeat that?

Mr. Frenkil: Had you previously been told that you might be terminated if your attendance problems or performance didn't get better?

Ms. Jefferson: My lateness, not my - You said attendance and lateness?

Mr. Frenkil: That's right. Or performance.

Ms. Jefferson: Not performance.

Mr. Frenkil: And had you - How many times had you been threatened with termination?

Ms. Jefferson: It was on that one letter but that was for lateness, not for sickness.

Mr. Frenkil: Did you understand that management was not particularly happen with your overall performance?

Ms. Jefferson: From the letters that I received.

Mr. Frenkil: Did you feel that Sandy was out to get you?

Ms. Jefferson: What - Do I have to answer that?

Hearings Examiner: Well,...

Mr. Epstein: I object.

Mr. Frenkil: Mr. Epstein's...

Ms. Jefferson: That's not...

Hearings Examiner: But you're asking her for a conclusion. So I would sustain that objection.

Mr. Frenkil: Mr. Epstein previously asked her a question about her understanding of what Sandy asked, which he's asked the same question...

Hearings Examiner: Yeah, but you're asking her to draw a conclusion as to what she was thinking

about.

Mr. Frenkil: I was asking what her understanding was, not her conclusion.

Hearings Examiner: Well, I think it's a conclusion.

Mr. Frenkil: In your own mind, did you have any view as to how Sandy was treating you?

Ms. Jefferson: You mean that day?

Mr. Frenkil: During that spring. Excuse me. During that spring.

Mr. Epstein: I'm gonna object.

Hearings Examiner: Let's put it this way. What did you feel about your relationship between yourself and Sandy during the spring? Did you feel you had a good relationship or a bad relationship?

Ms. Jefferson: Well, they were giving me memoes stating my lateness and sickness. And it had something to do with me being pregnant and my illness.

Hearings Examiner: But, did you think - Were you - Did you have a feeling that there was a bad relationship between you because of it?

Ms. Jefferson: Yes. I felt like that.

Mr. Frenkil: Did you feel that Sandy was being unfair during that period?

Ms. Jefferson: Period of what?

Mr. Frenkil: During, say March, till the time you were

fired, did you feel she had been unfair to you?

Ms. Jefferson:

No. I'm - No.

Mr. Frenkil:

Now, when Pam came - When Sandy came up to you at Greg's desk and you felt she was treating you unfairly then, do you remember if, at the time, you were thinking that Sandy was being unfair to you because of all the difficulties she had been giving you all spring?

Ms. Jefferson:

Yes.

Mr. Frenkil:

And that was part of the reason that you didn't want to go into meet with her, wasn't it? You thought it was part of a pattern of giving you a hard time, isn't that true?

Ms. Jefferson:

No, cause I looked at it as when I didn't want to continue the conversation that I wasn't thinking as far as she was treating me unfairly since spring.

Mr. Frenkil:

I have nothing else.

Hearings Examiner:

Now, during the latter part of your pregnancy, you were having - you were suffering from hypoglycemia, which is low blood sugar, right?

Ms. Jefferson:

Yes.

Hearings Examiner:

And did your doctor put you on a strict

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diet, sugar diet?

Ms. Jefferson: I was on a strict diet.

Hearings Examiner: I mean did he tell you to eat sugar and chocolates and things when you felt woozie?

Ms. Jefferson: No. Milk and fruit.

Hearings Examiner: Milk and fruit. Orange juice?

Ms. Jefferson: Uhm um. Yes.

Hearings Examiner: But did he tell you what you should do before you go to bed so you wouldn't oversleep or, perhaps to prevent oversleeping?

Ms. Jefferson: No.

Hearings Examiner: No? Did you ask him what you could do?

Ms. Jefferson: When it was - When it happened, yes, I began to get concerned.

Hearings Examiner: Well, did he tell you to eat anything special at night before you went to bed?

Ms. Jefferson: I just had to eat a snack; crackers and milk.

Hearings Examiner: But did he tell you what to eat at night before you went to bed?

Ms. Jefferson: I have a certain amount of fruit and bread exchanges I must eat.

Hearings Examiner: No. My question is did he tell you what you should eat at night before you go to bed?

Ms. Jefferson: That was the answer.

Hearings Examiner: Okay. Did he tell you you should eat every six hours or sooner?

Ms. Jefferson: No. Uhm, in the morning I ate breakfast; two hours later, a snack; then lunch, two hours later; four hours later, dinner; four hours later, a snack.

Hearings Examiner: Okay. And you followed that routine, is that right?

Ms. Jefferson: Yes.

Hearings Examiner: Okay. All right. I'm satisfied she was following the routine and she couldn't help the oversleeping as a result of the diabetes. All right. The request for a continuance is granted. Now, technically, the claimant has the burden to provide proper address for a witness. What I'm going to suggest is, maybe we can have him served at work.

Mr. Frenkil: Let me take a two minute break, if I can.

Hearings Examiner: Pardon me?

Mr. Frenkil: Let me take a two minute break to see if I can address that. A one minute break.

Hearings Examiner: Okay. Off record.

RECESS

Hearings Examiner: Mr. Frenkil?

Mr. Frenkil: I am uncomfortable being put in the

position of being responsible for a continuance, frankly, which I don't think is a burden of the employer. It's an expense to everybody. It's also, I think, inappropriate. Or let me say I had not heard George offer not to go forward with the hearing. I heard him ask the question of whether he had - I don't think he did, not in my presence, at least. So I have problems with the suggestion. We had the chance to have a continuance before. And having gotten into the hearing, now we have to have one now. I also have a problem with the catch-22 position of their not being able to (inaudible) Mr. Powell.

Notwithstanding that, I think we should finish this thing today. And I am prepared to cede my objection to the document so long as I can at least ask the witness, to whom it's put in, a couple questions about it, depending on how Mr. Epstein puts it in. I have problems with the exhibit but I have equal problems in the burden of the company having to put up this exercise again.

Hearings Examiner: Uhm, well, I mean if you're...

Mr. Frenkil: It's our third or fourth (inaudible).

Hearings Examiner: ...willing to allow him to permit the introduction of the exhibit and then to, however you can...

Mr. Frenkil: Yeah.

Hearings Examiner: ...challenge her on the statement, I'll allow that.

Mr. Epstein: Uh, I'm gonna have...

Hearings Examiner: But you're pretty much precluding...

Mr. Epstein: ...I'm going to object.

Hearings Examiner: ...yourself from objecting to it later.

Mr. Frenkil: For the purpose of this hearing I recognize that I have to say I really disagree with George's (inaudible) George's presentation as to whether this document is appropriate. There was a chance to bring the guy in. It's the claimant's responsibility. We shouldn't be put in this position of having the choice of a continuance over this document. The choice should have been the witness or not. And, uh,...

Hearings Examiner: All right. Now, I have to also ponder this from a review point of view, which is that there was a legitimate request for a subpoena and the Appeals Division

issued it. Now, the Appeals Division will only - will not go to any effort to verify an address. That's up to the claimant. And it appears to me - Now, I cannot say absolutely, certain, but it appears to me the address offered was wrong and, obviously, the jurisdiction is wrong. Now, once again, the Appeals Division - these are clerks and some - they don't know where Prince George's County is, you know. So, how can they determine where is the border of Baltimore City and Baltimore County? Someone, somewhere, must have suggested well, this might be near Liberty Road. So let's send it to the Sheriff of Baltimore County. I don't know. That's the responsibility of the claimant. However, I think there have been numerous times when the Board would send a case back because a subpoena was issued and they decided it's a crucial witness and they should have been given an opportunity to testify. So, here we are again. Now, if you want to accept the document and allow it to be put into evidence and to challenge her on the

statements in it, well, maybe. But, I think you're precluding yourself from objecting to it later. So, we might go with the continuance.

Mr. Frenkil: May I read it a moment?

Hearings Examiner: Yeah.

Mr. Frenkil: I might suggest as a middle ground -
No. I can't suggest a middle ground. I think we should go with the testimony.

Hearings Examiner: And, what I would like to suggest and, in fact, even if you objected to it, I'd like to do it anyway, have him served at work because it's a matter of a sheriff coming up there, putting it in his hand, and leaving.

Mr. Frenkil: Uhm, I don't have authority today to accept service at work.

Hearings Examiner: No, no. I'm not asking you to accept service. I'm - All I'm saying is unless it's a lack of security procedures, a deputy sheriff is gonna come in and put a subpoena in his hand. Do you have a lack of security procedures in the building?

Ms. Sober: Yes.

Hearings Examiner: You do? Well,...

PARTIES SPEAKING SIMULTANEOUSLY

Hearings Examiner: ...you still have to admit a deputy

sheriff, I think.

Mr. Frenkil: (Inaudible).

Hearings Examiner: With weapon.

Mr. Frenkil: (Inaudible)?

Hearings Examiner: Good question. So, uhm, it would be -
Where is your address (inaudible)? It's
gotta be in here somewhere, I know.
Alexander & Alexander is where...

Mr. Frenkil: USF&G Building...

Ms. Sober: 100 Light Street.

Hearings Examiner: Okay. (Inaudible)...

Mr. Epstein: Well, wait a minute. Does he work at 100
Light Street or does he work at Owings
Mills?

Ms. Sober: 100 Light Street.

Hearings Examiner: He's on Light Street?

Ms. Sober: 12th Floor.

Hearings Examiner: Okay. 12th Floor, 100 Light Street. And
if a deputy sheriff can't get up there,
we're in trouble.

Ms. Sober: (Inaudible).

Hearings Examiner: Yeah.

Mr. Frenkil: Could we go off the tape for a minute?

Hearings Examiner: Okay. We're going to conclude and...

Mr. Frenkil: (Inaudible).

Hearings Examiner: ...it'll be continued.

MEMORANDUM

March 29, 1989

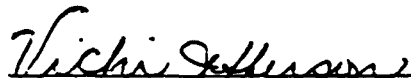
TO: Vicki Jefferson

FROM: Pam Sober


RE: Excessive Use of Sick Leave

As of this date, you have used 8 sick days. As you know, the company policy allows 8 sick days for an entire year. To use 8 sick days in the first 3 months of the year, especially in a high-volume production department such as ours is considered excessive.

If you are out sick any more this year, those hours will be docked from your paycheck for any additional sick time used. If your absenteeism should continue in this pattern, then you will face further disciplinary action. If for any reason I have a concern regarding your continued absenteeism due to illness, you will be requested to bring in a doctor's note before you may return to work.


Vicki Jefferson


Pamela F. Sober


Sandy Vernago

En #1

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MEMORANDUM

May 30, 1989

TO: FILE

FROM: Sandy Vernago
WP Supervisor

Sandy Vernago

RE: May 26, 1989 - Vicki Jefferson

On Friday morning I asked Vicki for a doctor's note because she had been out for two days due to a car accident in which she passed out and totaled her car (on Thursday she stated she would bring one in). Her reply was that she didn't have it with her. I called Rita Johnson in Personnel to ask her if I was right to ask this of her. She told me to tell Vicki to make sure she brought the note in on Tuesday (Monday was a holiday).

I noticed from approximately 8:45 a.m. to 10:35 a.m. that Vicki was on and off the phone and away from her desk a lot. Around 10:35 a.m. Vicki was at Gregg's desk and I asked her if she could possibly go back to work. At that time she just looked at me and I asked her if she was on break. Vicki said "yes and no". I then asked her again and she said "maybe I don't feel like going back to work". Vicki then said "how can you approach me when everyone else is talking, including you?" I then stated that it was not her concern. During this time, Gregg motioned for Vicki to drop it and go back to her desk. I asked Vicki to come into Pam's office so we could discuss the problem. I asked Vicki again (second time) to come into Pam's office. She said "no, I don't want to". I then said "I am tired of this" and at that time (third time) I said, "come into Pam's office now!". We proceeded into Pam's office. I told Vicki that I was her Supervisor and that I had let the problem go on for what I thought was an extreme amount of time. She questioned my job and said "you are being unfair to me". I said "I treat everyone fairly in this department". She also stated that she knew everything that went on in this department and that was how she arrived at the fact that I was treating her unfairly. I told Vicki that I am not at liberty to discuss any problems with anyone that arise in this department and that she didn't know everything that went on (I was referring to the reason others may have been in discussion). I stated "if you have a problem with me then you can go to my Manager, Pam Sober and we can discuss the problem." Vicki then said "there is no problem". I told her that she should stop worrying about others and just worry about herself.

During this discussion, Vicki said "I don't want Pam calling me into her office on Tuesday to discuss this, because I don't feel like talking about it". I then informed Vicki it was my responsibility to inform Pam of the problem and that if she was called into Pam's office on Tuesday she would have to deal with the problem then.

14/89

Enter

MEMORANDUM

May 30, 1989

TO: FILE

RE: May 26, 1989 - Vicki Jefferson

Page Two

Vicki also told me during this dicussion that she had a dr's. appt. on Tuesday at 2:00 p.m., which meant that she would have to leave at 1:00 p.m. The week before she informed me that she had a dr's. appt. on Wednesday at the same time and she would have to leave at the same time as Tuesday. Vicki was told that she was supposed to make all her appointments in the evening. Her doctor had previously informed Pam Sober that Vicki could make appointments in the evening.

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521-2841

REMARKS - CLAIMS, ETC. 8408 Maymeadow Ct.
Baltimore, MD 21207

ATTENDANCE RECORD

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11/24 - du Appt - leave at 3:45 (no leave charged)

12/11 - about 3:00 had to be taken by ambulance to hospital (diabetic - low sugar problem)

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2/24 - Took ~~35~~ 35 mins extra for lunch. I was not informed earlier of it. Had a talk with Vicki.

3/8 - Came in at 9:15

3/23 - Vicki came in at 7:20 instead of 7) + left normal time didn't mention anything about it until I brought up on 3/24 that she had to make up the time.

3/28 - Vicki left at 10:30 (came in at 7) for di's appt. Came back at 2:15 + worked until 4:45 - OK for extra 1 hr. jfo

7/25 - Called to say dog had to have emergency surgery had to be at vet at 9, came in at 10:15 - made up time

9/6 - I arrived at work to find a message taken by Gregg that Vicki was taking a personal day. I called Vicki + said there was 2 people out (scheduled), I Suk, + Paul was taking over the proofer position + it would be all possible she should make it in she said she had some paperwork to do + that's why she decided to take off - I told her she should have called me this am at home + asked in enough time to get to work on time of ~~the~~ I said no. Arrived at work at 10:30.

11/14 - Leaving at 12:00 - made up time 11/10 + 11/11

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2/14 - Arrived 11:30am Vicki was taken to hospital by ambulance (went into insulin shock).

3/7 - Out due to snow. Vicki will make up time. She has 60 days to do so. Note will follow as to immediate time worked. Time made up ~~to~~ ~~time~~

3/9 - Arrived 8:35. Should come in at 7:00. Vicki has 2 hr 15 min Comp time. ~~At the time~~ ~~the~~ 35 mins CT used to make up for lateness

3/17 - Vicki started going into insulin shock (early) they had to coax her into eating some Candy or sugar. She was coherent and refused for a while. Eventually she took it and about 15 mins later she

Started getting ~~back~~ again. She then tested her blood and ate lunch.

3/20 - Arrived 45 mins late. Said she couldn't wake up.

3/24 - Disappt. came in at 11:40. Used 1/2 P day. Needs to make up 1 hr.

3/31 - Called in 7:30 (spoke with Bless) said she woke up sick and would be in before 9am. Starting time - 7:00.

4/3 - ^{11:30} had to call ambulance - diabetes reaction (5th one since Feb) was taken to Mercy.

4/12 - Vicki injured Pam - that on 4/12 she had to get a strepam and would be ~~at~~ late for work.

4/13 - Vicki was away from desk 7:00 - 7:30 - had a communication (at which time 2 people would be coming in to please work

4/21 - Noticed Vicki on phone ~~from~~ between 12:00 - 12:30. Sent Datagram asking to please limit extensive calls to breaks & lunch

4/26 - Arrived 10:46. Vicki is going to make up time. See Time Card

5/24 - Vicki called Pam at home at 6:30 am & said she was in a car accident the night before because she blacked out while she was driving & her car was totaled. She said she had injured her back & lower stomach & wanted to call her doctor to see if he wanted to see her but she wouldn't be able to get in touch with him until around 9:00. She said she should call me & let me know what time her dr's appt was & then to call me by 2:00. I never got a phone call. I called 3:40 at which time she said her stomach was still hurting & she was going to stay home tomorrow to relax & had a dr's appt - I told her I'd never had a dr's appt & asked why she never called me to let me know she had a dr's appt & she said she forgot.

MEMORANDUM

April 3, 1989

TO: Vicki Jefferson

FROM: Pam Sober
Manager, Word Processing

Pam Sober

RE: Memo Dated 3/29/89 - Excessive Use of Sick Leave

Below I will outline what transpired on Friday, March 31 as explained to me by your Supervisor, Sandy Vernago.

You called in at 7:30 (1* - spoke with Gregg) and said that you woke up sick and would be in around 9:00. You arrived at 9:25. Sandy spoke with you concerning the above captioned memo. You said you didn't agree, and Sandy told you that signing the memo did not mean that you agreed with it, but that you understood what was going to happen. You told her that you would like to talk to me. 2* - You told Sandy that you didn't agree with the word "excessive" and wanted to know why you couldn't make up the time (you were "docked" 2½ hours). 3* - You wanted to know if you had called in to say you'd be late without stating you were sick, would you still be "docked". Sandy told you she didn't know the answer to that question and would find out from me and get back to you. 4* - You also said to Sandy, "If I'm going to be docked, then why make an effort to come in at all? Why not just stay home?" 5* - You also told Sandy "I cannot wake up in the mornings sometimes because of my illness, and I will be late and there's nothing I can do about it." Sandy told you that you will still be marked late because everyone must be treated equally. 6* - You said that we should compare your lateness and absenteeism to before you were pregnant. You said the cause of this is due to your pregnancy. You also told Sandy that you did not want to be treated special because of your illness.

Vicki, I will try to answer each of your questions or statements. First of all, if you call in, and are late or sick anymore you may be fired.

1* - You have been repeatedly told that it is your responsibility when calling in to say you will be sick or late that you must talk to your Supervisor or your Manager. Gregg is neither one of these. When you call in, if Sandy or I are not here, you may tell Gregg that you're not coming in, but it is your responsibility to call back and talk to either Sandy or me. Refer to the copy of page 20 of the Employee Handbook. Further infraction of this policy will result in termination.

MEMORANDUM

TO: Vicki Jefferson
RE: Memo Dated 3/29/89

- 2* - Every employee working for Alexander & Alexander is given 8 sick days to use for the entire year. You have used all of yours by February 14. That is excessive, and because this privilege has been abused, you will not be allowed to make up the time.
- 3* - Yes, you would still have been docked whether you called in sick or were just late.
- 4* - The reason you should come in at all is because you have no sick time left. This willful neglect of duty and habitual absence and/or tardiness will result in termination. (see page 22 of the Employee Handbook attached).
- 5* - It is your responsibility to get up and be at work on time. Further infraction of this policy will result in termination.
- 6* - As far as comparing your lateness and absenteeism to before your pregnancy, you had 6 sick days and 6 latenesses in 1988 and 2½ sick days in January before you were pregnant. Also, we cannot allow different treatment to anyone in the department because they are pregnant.

In closing I would like to say that Alexander & Alexander has been extremely lenient with you on the above mentioned problems, but can no longer continue to have the department disrupted.

Attachments

Received 4/4/89

Vicki Jefferson
Vicki Jefferson

PERSONNEL POLICIES & PRACTICES

LATENESS/ABSENTEEISM REPORTING

It is the responsibility of each employee to realize that their absence or tardiness may burden other employees in the department; and this, in turn, means that our clients may not be provided with the professional service they require.

You must notify your immediate supervisor as early as possible when you are going to be late or absent so that arrangements can be made for rescheduling of work, etc.

Excessive absenteeism or tardiness will result in counseling and could result in termination.

MEMORANDUM

April 6, 1989

TO: Vicki Jefferson
FROM: Pam Sober
Manager, Word Processing
RE: Your Letter - Undated

I would like to respond to your letter addressed to "Ladies, Personnel Department and my Immediate Supervisors, Ms. Pam Sober, Ms. Sandy Vernago and Ms. Rita Johnson".

First of all, A&A did not become aware of your medical condition until December 11, 1987 when you suffered a diabetic coma.

Second, Jane Kramer and I met with you to discuss possible changes that would accommodate your illness while minimizing the disruption to the work place caused by your frequent and unpredictable tardiness and absences. For example, we offered to change your shift presently at 7:00 a.m. - 2:30 p.m. to 8:45 a.m. - 4:45 p.m. We hoped that this change would minimize the disruption to the office caused by you not showing up for work until after 9:00 a.m. As you know, we rely on the people who have chosen to come to work at 7:00 a.m. in that it permits considerable work to be performed before the normal work day begins at 8:45 a.m. You rejected our offer stating that you needed your fiance to wake you up in the morning before he left for work and that a later reporting time for you would not accommodate that arrangement.

The next issue that we addressed is your request that we continue to pay you for sick days in excess of the eight (8) paid sick days allowed annually for each employee. We cannot grant your request as we must treat all of our employees the same. Furthermore, we told you that A&A does have a medical disability program for which you may qualify. To this end, I have attached a copy of that policy and a request form.

Patti Klosek and I gave your doctor a call this morning (copy of release attached) to find out if he had any ideas of reasonable accommodations we could make for you. Dr. Khouzami told us that once you have passed 14 weeks of your pregnancy, these diabetic comas should not happen anymore. On Monday, when you had to be taken to the hospital by the paramedics, you were already past 14 weeks. Dr. Khouzami told us that he has explained to you that "missing your meals by as little as a half-hour can cause these reactions. Vicki told me I don't have time to eat when I'm supposed to." I have told you on numerous occasions that you can eat at any time while you are working at your desk. Dr. Khouzami told us "she's missed many appointments,

MEMORANDUM

TO: Vicki Jefferson
RE: Your Letter - Undated

and I've told her that she can't miss anymore. She told me she can't get a ride to my office in the evenings." Vicki, you get off work at 2:30 p.m. and the doctor told us that he has office hours one night a week until 6:00 p.m. He also told us that at 32 weeks of your pregnancy, you will have to come once a week in the morning for a stress test and other tests. Since we know that you will be coming to work late for these appointments at 32 weeks, we will not allow you to come in late or leave early for your regular doctor appointments before this time. Dr. Khouzami said, "I've talked to Vicki many times the and the bottom line is Vicki wants to do what Vicki wants to do. I don't have any other suggestions for you to accommodate Vicki."

Please advise us of any other reasonable efforts we may make to accommodate your illness. However, please remember that any such accommodation must enable the word processing unit to operate with a minimum of disruption. To this end, our employees are expected to report to work on time; and continued tardiness or absences will result in termination.

Pamela Sober 4/6/89 Vicki Jefferson 4/6/89
Pamela F. Sober Date Vicki Jefferson Date

Attachment

RECEIVED

APR 17 1989

MEMORANDUM

ALEXANDER & ALEXANDER
BALTIMORE OJ

April 12, 1989

TO: Vicki Jefferson

FROM: Pam Sober
Manager, Word Processing



RE: Your Letter of April 7, 1989

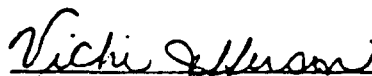
This memorandum is in response to your letter of April 7, 1989.

1. You have accepted our offer to change shifts and have decided to transfer to the 8:45 a.m. to 4:15 p.m. shift and we will accommodate your further request for a 1/2 hour lunch. Hopefully, these changes will eliminate the work disruption caused by your late arrivals which are, in turn, caused by your diabetic condition.
2. In your letter, you requested that we permit you to use your vacation time or personal days for your lost time (late arrival or absence) caused by your diabetic condition. The reason for your request is that you have already used your eight (8) sick days available for the entire year.

As you know, A&A has a policy requiring the prior approval of management before an employee may use either vacation or personal days. The reason for this policy is that managers need advance notice of employee absences in order to schedule the activities of remaining employees, thereby insuring efficient work operations.

Notwithstanding the foregoing and as another accommodation to you, A&A agrees to grant your request that you use your personal days to cover those periods when you are late or absent due to your diabetic condition. To the extent possible, you are still required to use your best effort to get to work on time.

Finally, I want to confirm our earlier discussion about your need to eat appropriately in order to eliminate any continuing diabetic comas. As we discussed with Dr. Khouzami, you should be able to control your diabetic condition through timely eating of appropriate foods. As we discussed, it is your responsibility to monitor your condition and observe your diet. To accommodate your condition, you may eat food or drink at you work station at any time.


Vicki Jefferson

4/12/89
Date

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Alexander
& Alexander

En #7



GREATER BALTIMORE MEDICAL CENTER

Victor A. Khouzami, M.D.
Chairman, Department of Obstetrics
Claire M. Wetz, M.D.
Head, Division of Maternal-Fetal Medicine

(301) 628-2568

April 3, 1989

TO WHOM IT MAY CONCERN:

Ms. Vicki Jefferson is an obstetrical pt. under my care. She is a Class C Diabetic in the second trimester of pregnancy. Her EDC is 9/19/89. Ms. Jefferson was hospitalized from 2/6/89 through 2/12/89 for management of her diabetes. She will be seen by me in the office every 2 wks. for routine prenatal exams. Ms. Jefferson sometimes becomes hypoglycemic during the night, and may occasionally be late in getting started in the morning. On these occasions, she should be excused for being late. She may need to come in late or leave early from work in order to keep an appointment with me for her prenatal visits. I would appreciate your cooperation in this regard. Any questions regarding Ms. Jefferson may be directed to my office.

Thank you.

Victor A. Khouzami, M.D.

rb

6701 North Charles Street
Baltimore, Maryland 21204

Women's Hospital Fertility
Center at GBMC
Charles Street

The Milton J. Dance, Jr.
Head and Neck Cancer
Rehabilitation Center
Charles Street

The Sheila K. Riggs
Radiation Oncology Service
Charles Street

The Virginia B. Sherwood
Same Day Surgery Center
Charles Street

GBMC's Community and
Family Health Center
1017 East Baltimore Street
Baltimore, Maryland 21202

LAW OFFICES
ROCHLIN AND SETTLEMAN P. A.

110 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-1784

ROCHLIN, SETTLEMAN & GOLDMAN
308 SECOND STREET
LAUREL, MARYLAND 20707
(301) 792-7440

(301) 539-3070
TOLL FREE: (800) 342-5983
TELECOPIER: (301) 837-7430

THE PATRICK CENTER
SUITE 500
30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

February 1, 1990

Administrative Officer
Department of Economic
and Employment Development
Appeals Division - Room 511
1100 North Eutaw Street
Baltimore, Maryland 21201

Re: Claimant: Vicki Jefferson
Employer: Alexander & Alexander, Inc.
Appeal #: 8908242

Dear Sir/Madam:

I represent the Claimant in the above-referenced matter,
which was continued on January 25, 1990, at the Northwest
Unemployment Office by Hearing Examiner Robin Brodinsky.

As soon as the new date is set, please issue Subpoenas
to Gregory Powell at the following addresses:

4008 Dorchester Road
Baltimore, Maryland 21207

Alexander & Alexander, Inc.
12th Floor, 1000 Light Street
Baltimore, Maryland 21201

Thank you for your attention to this matter.

Very truly yours,

ROCHLIN & SETTLEMAN, P.A.



George A. Epstein

GAE:tmc

cc: Ms. Vicki Poindexter

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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.
VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	02/01/90	8908242	216-96-1356

Appellant: EMPLOYER

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on **FEBRUARY, 16 1990** at **12:30 P.M. EST** (Please be on time)
FEBRUARY, (SIXTEENTH) 1990

HEARING LOCATION
NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

ROBIN BRODINSKY

Mail To: VICKI JEFFERSON
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

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.)

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND
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4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:
ROBIN BRODINSKY

Mail To: **ALEXANDER & ALEXANDER INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117**

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158

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STATE OF MARYLAND
APPEALS DIVISION - ROOM 511
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
333-5040
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VICKI JEFFERSON	ALEXANDER & ALEXANDER INC.	02/01/90	8908242	216-96-1356

Appellant: **EMPLOYER**

Local Office No. **045**

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FEBRUARY, (SIXTEENTH) 1990

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**NORTHWEST UNEMPLOYMENT OFFICE
4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215**

Hearing Examiner:
ROBIN BRODINSKY

Mail To: **GEORGE A. EPSTEIN, ESQUIRE
100 E LEXINGTON STREET
BALTIMORE, MD 21202**

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Local Office No. 045

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4025 MORTIMER AVENUE (NEAR
NORTHERN PKWY. & REISTERSTOWN)
BALTIMORE, MD 21215

Hearing Examiner:

ROBIN BRODINSKY

Mail To: **ALEXANDER & ALEXANDER, INC.**
ATTN: RITA JOHNSON, SR HR REP.
100 LIGHT STREET
BALTIMORE, MD 21202

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160

Maryland Department of Economic & Employment Development

Governor
J. Randall Evans
Secretary

1100 North Eustaw Street
Baltimore, Maryland
21201

SUBPOENA

In the Matter of the Claim of:

Appeal Number: 8908242-EP

Vicki Jefferson

Social Security Number: 216-96-1356

To: Honorable David Deangelis

THE SHERIFF OF Baltimore City, Greeting

We Command You, That You Summon Gregory Powell

4008 Dorchester Road

Baltimore, Maryland 21207

all business and excuses laid aside, to appear and attend before the Hearings Examiner

Mr. Robin Brodinsky

4025 Mortimer Avenue (Near
at Northern Pkwy. & Reisterstown Rd. in the City of Baltimore, Maryland 21215

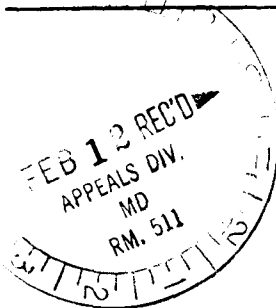
on February 16, 1990 at 12:30 o'clock P.M., to testify and give evidence

in a certain hearing or investigation pertaining to the claim of Vickie Jefferson

for unemployment insurance benefits

WITNESS the seal of the Department and the signature of Mr. Selig A. Wolfe

Administrative Officer



OFFICE OF UNEMPLOYMENT INSURANCE

Selig A. Wolfe
Selig A. Wolfe
Administrative Officer

Issued this 5th day of February, 19 90

At the request of Claimant

DEED/ 381 (Revised 7-88)

161

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

TRANSCRIPT OF TESTIMONY

Heard before

Robin L. Brodinsky

Hearings
Examiner

in the case

Vicki L. Jefferson
8408 Maymeadow Court
Baltimore, MD 21207

S.S. #216-96-1356

Appeal #8908242

Alexander & Alexander, Inc.
Hampton Plaza
300 E. Joppa Road
Towson, MD 21204

APPEARANCES

Vicki L. Jefferson - claimant
George A. Epstein - Attorney

Steven Frenkil - Attorney

SUBPOENAED WITNESS: Gregory Powell

Robin L. Brodinsky
Hearings Examiner

TIME: 12:30 p.m.
DATE: February 16, 1990
PLACE: Baltimore, MD

TRANSCRIBED BY: ALICE MARIE COOPER

Appeal #8908242. Vicki Jefferson is the claimant. This is a continued hearing on the - Refresh my recollection. Was this the employer's appeal, as well as - initial appeal?

Mr. Epstein: This was the claimant's appeal initially. And the claimant received a favorable ruling at this level...

Hearings Examiner: And then it was remanded...

Mr. Epstein: It was...

Hearings Examiner: ...and the employer appealed, okay.

Mr. Epstein: Right.

Hearings Examiner: I remember now.

Mr. Frenkil: And the file was lost (inaudible)...

Hearings Examiner: Yeah. That's right.

Mr. Frenkil: So, technically, the...

Hearings Examiner: I got the tapes from last time...

Mr. Frenkil: ...(inaudible).

Hearings Examiner: All right. And the issue is whether or not the claimant was separated for misconduct, connected with her work. All right. We adjourned last time to afford the opportunity for Gregory Powell to be present. And I think that was the sole reason for being here today, correct?

Mr. Epstein: That's correct.

Hearings Examiner: Who, it's alleged, has information concerning the circumstances revolving around the claimant's separation from

employment. There was some problem in serving the claimant last time and I had made the suggestion that service be at the employer's premises as well as the claimant's home address. And that's why we're here today. Present are the claimant, with counsel George Epstein. And for the employer, Rita Johnson is here. And the summons witness, Gregory Powell, is here. And Steven Frenkil for the employer. All right. Would each of the witnesses please raise your right hands and be sworn?

Ms. Johnson:

I'm not gonna...

Hearings Examiner:

You're not gonna testify, Ms. Johnson?

Ms. Johnson:

No.

Hearings Examiner:

No?

Mr. Frenkil:

No. She's a company representative.

Hearings Examiner:

Will you be testifying?

Mr. Frenkil:

Well, just in case. You might as well...

Hearings Examiner:

All right. Raise your right hand.

Ms. Johnson:

Okay.

OATH ADMINISTERED

All Parties:

Yes.

Hearings Examiner:

Thank you. All right. The claimant had requested the presence of this witness. And, Mr. Epstein, do you want to proceed?

Mr. Epstein: Thank you. Mr. Powell, I'm gonna direct your attention to May 26th, 1989. Were you employed at Alexander & Alexander on that date?

Mr. Powell: Yes, I was.

Mr. Epstein: And, are you still employed there today?

Mr. Powell: Yes, I am.

Mr. Epstein: In what capacity were you employed there on May 26th, 1989?

Mr. Powell: Word processor.

Mr. Epstein: All right. And who was your immediate supervisor?

Mr. Powell: Sandy - Sandy Vernago.

Mr. Epstein: All right. And what, if any, working relationship did you have with Pam Sober?

Mr. Powell: She was, uhm, - Before Sandy made supervisor, Pam was our supervisor. Then after Sandy made supervisor, she told us - After - Yeah. After Sandy made supervisor, Pam told us that we would be reporting to Sandy.

Mr. Epstein: Okay. And who were you reporting to on May 26th?

Mr. Powell: Sandy. Pam wasn't in. Sandy.

Mr. Epstein: Okay. Now, did you - Was - Strike that. Were you working with Vicki Jefferson at that time, May 26th, 1989?

Were you working in the same department?

Mr. Powell: Yes.

Mr. Epstein: And where was your station located with respect to her's?

Mr. Powell: My work station was behind her's.

Mr. Epstein: Okay. And, was your work station separated from her's in any way?

Mr. Powell: By a partition.

Mr. Epstein: Okay. But other than that, they were adjacent?

Mr. Powell: Right.

Mr. Epstein: Okay. Now, directing your attention to that morning on May 26th, 1989, did an incident come about involving Ms. Jefferson and Ms. Vernago?

Mr. Powell: Yes.

Mr. Epstein: And can you relate what happened, what led up to that incident?

Mr. Powell: What led up to the incident?

Mr. Epstein: Right. That morning what happened that caused that incident between Ms. Jefferson and Ms. Vernago?

Mr. Powell: Vicki was standing at my desk talking to me...

Mr. Epstein: All right. Now, what did she come over to your desk to talk to you about, if you remember?

Mr. Powell: She came over to my desk to ask me something about a project she was doing at her desk.

Mr. Epstein: Okay. And was that project related to her job?

Mr. Powell: Yes. (Inaudible).

Mr. Epstein: Okay. Do you remember the nature of that project at this time?

Mr. Powell: No.

Mr. Epstein: All right. And what happened while she was talking at your desk?

Mr. Powell: After I answered her question about the job, she started talking to me. And Sandy came around to where she was standing. And she asked Vicki if she could go back to work.

Mr. Epstein: Okay. Now, after Ms. Jefferson asked you a question about a project, what did you continue talking about at that time? What did you proceed to talk about at that time, if you recall?

Mr. Powell: Vicki asked me if I noticed that they were standing over there talking and I said yes. And, uhm,...

Mr. Epstein: Now, who is "they"? Who was standing "over there" talking and where were they standing?

Mr. Powell: (Inaudible) Sandy and Chris
(inaudible). They were standing at Chris
Eder's desk.

Mr. Epstein: All right. Were they other employees of
this same department?

Mr. Powell: Right.

Mr. Epstein: And do you know what they were talking
about?

Mr. Powell: No.

Mr. Epstein: All right. And, uh, how long was Ms.
Jefferson standing at your desk, talking
with you when Ms. Vernago came over?

Mr. Powell: About two minutes.

Mr. Epstein: And had Ms. Jefferson been at your desk
earlier that same morning, talking with
you?

Mr. Powell: No. Not that I remember.

Mr. Epstein: Okay. Do you know what Ms. Jefferson had
been doing that morning up till the time
that she came over to your desk to talk
with you about this project?

Mr. Powell: She was sitting at her desk and I thought
she was working.

Mr. Epstein: Okay. You were not monitoring what she
was doing, were you?

Mr. Powell: No.

Mr. Epstein: Okay. That was not part of your

responsibility?

Mr. Powell:

No.

Mr. Epstein:

Okay. Do you remember about what time this happened that she came over to your desk to talk with you?

Mr. Powell:

No. I know it was before 11 cause I went on break at 11:15 (inaudible).

Mr. Epstein:

All right. When Ms. Jefferson came over to - Excuse me - When Ms. Vernago came over to your desk, what happened, then? What was the conversation between her and Ms. Jefferson?

Mr. Powell:

She asked Vicki if she could get back to her desk and do some work. And Vicki said yeah, when everybody else on the other side starts work.

Mr. Epstein:

And what happened then?

Mr. Powell:

And Sandy said something about don't worry about - "I'm not concerned about what's going on on the other side. I'm concerned about you." And she asked Vicki, "Would you like to continue the discussion in Pam's office." And Vicki said no.

Mr. Epstein:

All right. Now, what kind of voice did Ms. Vernago use when she asked Ms. Jefferson if she would like to continue

the discussion in Pam's office?

Mr. Powell: It was a calm, normal Sandy voice.

Mr. Epstein: Did it appear to be a question or a command?

Mr. Powell: Question.

Mr. Epstein: And what was Ms. Jefferson's response?

Mr. Powell: She said, "Yeah, as soon as everybody else on the other side gets back to work."

Mr. Epstein: Was that her response to when Ms. Vernago asked her if she wanted to continue the conversation in Pam's office?

Mr. Powell: Oh, no. When she asked her - No. She said no. When she asked if she wanted to continue the conversation, Vicki said no.

Mr. Epstein: And what happened then?

Mr. Powell: Vicki turned and walked away.

Mr. Epstein: And where did Vicki go?

Mr. Powell: Vicki went back to her desk and Sandy turned and went towards Pam's office.

Mr. Epstein: And did she go into Pam's office?

Mr. Powell: She was between her office and Pam's office when she turned around and she asked Vicki if she would come into her office.

Mr. Epstein: And what did Vicki do at that time?

Mr. Powell: Vicki was at her desk. She didn't do

anything.

Mr. Epstein: All right. Now, what tone of voice did Ms. Vernago use when she asked Vicki to come into Pam's office at that time?

Mr. Powell: By tone, volume or - She was...

Mr. Epstein: Well, what volume?

Mr. Powell: It was - If Vicki was still standing at my desk then she would have heard what Sandy said, but I don't know - I think that - I don't know that Vicki could have heard her from where she was sitting cause Sandy was behind the wall. So, I don't know. You know, it was like a normal tone. It wasn't like her yelling. It was normal tone.

Mr. Epstein: All right. Was Vicki further from Ms. Vernago at that time than you were?

Mr. Powell: Yes.

Mr. Epstein: Okay. And then what happened after Sandy asked her to come into Pam's office?

Mr. Powell: Sandy went into the office and then she came back out of the office. And she said louder, "Vicki, I want to see you in Pam's office."

Mr. Epstein: And what happened then?

Mr. Powell: Vicki got up and went in there.

Mr. Epstein: And what happened at that point?

Mr. Powell: They closed the door.

Mr. Epstein: Okay. So you don't know what was said after that?

Mr. Powell: No.

Mr. Epstein: All right. Now, when Ms. Vernago asked Ms. Jefferson to get back to work and Ms. Jefferson replied, "When everybody else does," what kind of tone did Ms. Jefferson use at that time? Was it loud, calm? Could you tell?

Mr. Powell: It was a calm. The same tone that she had been talking with her up to that point. Calm and - it wasn't a loud tone.

Mr. Epstein: Were there other employees standing around, listening to the conversation at that point?

Mr. Powell: Where we were?

Mr. Epstein: Yes.

Mr. Powell: No.

Mr. Epstein: All right. Would anybody else have been able to hear this other than you?

Mr. Frenkil: Objection.

Hearings Examiner: Sustained.

Mr. Epstein: In your opinion, was there anybody else who was close enough that they would have been able to hear them?

Mr. Frenkil: Same objection.

Hearings Examiner: Did you see anyone close enough who might have heard?

Mr. Powell: No, not from where I was sitting.

Hearings Examiner: You couldn't see.

Mr. Epstein: Now, uhm, just by way of background, what relationship, if any, did you and Ms. Jefferson have at this time other than working in the same department? What, if any, relationship?

Mr. Powell: We didn't have a relationship. We had a work relationship.

Mr. Epstein: Did you ever socialize with her?

Mr. Powell: No.

Mr. Epstein: Have you ever socialized with her since this incident?

Mr. Powell: No.

Mr. Epstein: Have you see her since this incident, the last day that she worked at Alexander & Alexander...

Mr. Powell: Yeah. I saw her...

Mr. Epstein: ...up until today?

Mr. Powell: Yes. It was - I think it was a couple days after - It was about a week after she stopped working there. And I went over and dropped some Tupperware off that she had got from (inaudible).

Mr. Epstein: Okay. And other than that, have you seen

her from that day to this?

Mr. Powell:

No.

Mr. Epstein:

I have nothing further.

Hearings Examiner:

Mr. Frenkil?

Mr. Frenkil:

Thank you. Mr. Powell, as you know I'm the attorney for Alexander & Alexander. I have a few questions I want to ask you. Uhm, as I understand your testimony, Ms. Jefferson was over at your desk asking you a business related question about the work that was being done that day?

Mr. Powell:

Yeah. When she first came to my desk, she came and asked me a question about the project she was working on.

Mr. Frenkil:

And then the conversation shifted into a social conversation...

Mr. Powell:

Right.

Mr. Frenkil:

...personal conversation?

Mr. Powell:

Right.

Mr. Frenkil:

Did you mention to her that she should go back to work at that point in time?

Mr. Powell:

No, I didn't.

Mr. Frenkil:

In fact, when Sandy came up to talk to her, that was the very topic Sandy asked about, wasn't it; why don't you get back to doing work rather than doing something

that wasn't work. Isn't that right?

Mr. Powell: Well, Sandy came up and asked her if she could go back to her desk and do some work.

Mr. Frenkil: Let's talk about Sandy for a moment, if we might, in terms of personal style. Does she have a very pleasant tone when she talks to people or is she sarcastic? How would you describe her style of interacting?

Mr. Powell: Uhm, sometimes pleasant, sometimes sarcastic.

Mr. Frenkil: Would you say she was being sarcastic that day...

Mr. Powell: Uhm,...

Mr. Frenkil: ...at that point in the conversation when she said, "Can you get back to work"?

Mr. Powell: No. I think it was more of a pleasant tone. I don't think she was being sarcastic.

Mr. Frenkil: Did Sandy come up to Vicki and ask if she could do some work?

Mr. Powell: She asked Vicki, "Can you get back to work." "Can you go back to your desk and do some work?"

Mr. Frenkil: You don't consider that sarcastic?

Mr. Epstein: Objection.

Hearings Examiner: Sustained.

Mr. Frenkil: Your perception of that was a friendly tone?

Mr. Powell: No. I didn't say friendly. I said pleasant. I don't think it was sarcastic, but I don't think - by sarcastic, I assume you mean did she say what she meant or was she saying something and she didn't mean the way it sounded.

Mr. Frenkil: I want to clarify your recollection and your testimony. You previously signed a document, a statement, on July 20th, 1989 concerning the events that happened that day, is that correct?

Mr. Powell: Right.

Mr. Frenkil: Let me show it to you and see if you recognize that handwriting.

Mr. Powell: Yeah.

Mr. Frenkil: On the top of it it says, "I - and we're gonna put this in as an exhibit - "To Whom It May Concern: I, Gregory Powell, do certify the following to be a true and accurate account, to the best of my knowledge, of events pertaining to an incident..." and so forth. Where did you get those words from?

Mr. Powell: Off the top of my head.

Mr. Frenkil: Those are words you use?

Mr. Powell: Yes.

Mr. Frenkil: So you would consider the events that occurred that day an incident, is that correct?

Mr. Powell: Yeah. By "incident" meaning something that happened.

Mr. Frenkil: Okay. In your statement or in your testimony a few minutes ago, you said that Vicki's response to Sandy was that she would go back to work when the other people got back to work, is that correct?

Mr. Powell: Yeah. That was the gist of what she said.

Mr. Frenkil: In your statement you said, and I'll just read to you and you can look to see if I'm reading correctly. George has a copy - "Vicki said, "Yes, I can" -- Excuse me a minute. PAUSE "Vicki said - Tell me if I'm reading this correctly - "Vicki said, "Yes, I can," and Sandy asked Vicki to do some work then. Vicki asked Sandy how she could tell Vicki to get back to work when everyone else on the other side of the room was talking and not working either." So, what you said back in July

of '89 was that, first, Vicki said, "Yes, I'll go back to work." And then asked a question about how Sandy was handling the situation. Today, what you recall to be the facts are that Vicki conditioned going back to work when the other people went back to work. I'm asking you which is the correct recollection?

Mr. Powell: I think when I typed this, I just didn't type that in there. She said, "Yes, I can when the other people on the other side get back to work."

Mr. Frenkil: So, wh--

Mr. Powell: When she asked Sandy that question, it was later on.

Mr. Frenkil: So, it was - You understood her answer to be that she'd go back to work, conditioned upon when the other people went back to work, isn't that right?

Mr. Powell: Right.

Mr. Frenkil: And you didn't really consider that an answer that she was going back to work? Something else would have to happen before she got back to work, is that correct?

Mr. Powell: What do I - I don't...

Mr. Frenkil: You understood that something else would

have to happen before - Strike that. You understood that Vicki was saying...

Hearings Examiner: Let's put it this way. What did you think she meant?

Mr. Frenkil: Did you - You understood that Vicki meant that she'd get back to work when the other guys got back to work, right?

Mr. Powell: Right.

Mr. Frenkil: And then, right after that, you heard her tell Sandy no when Sandy asked, "Do you want to continue this in my office"?

Mr. Powell: The discussion. It wasn't right after that.

Mr. Frenkil: How long did this transaction take, this incident?

Mr. Powell: About a minute and a half to two minutes.

Mr. Frenkil: What were all the other things that was said in between those two topics; "Yes, when the other people get back to work" and the statement, "No. I don't want to continue this in my office." What happened, then, between...

Mr. Powell: Well, she asked, "How can you ask me to go back to work when everybody else on the other side is talking?" And Sandy said something like, "I'm not concerned about what they're doing. I'm only

concerned about you right now."

Mr. Frenkil: And what else was said? Anything else?

Mr. Powell: No.

Mr. Frenkil: So maybe it took maybe fifteen seconds between those two points and not a minute and a half?

Mr. Powell: Oh! I thought you meant how long did the whole thing take place.

Mr. Frenkil: Would you agree that from the time Vicki told Sandy, "I'll go back to work when the other people go back to work" to the time that she told her, "No, I don't want to continue this in your office," less than thirty seconds had passed?

Mr. Powell: Right.

Mr. Frenkil: So, Sandy had heard what she perceived as two negatives in a very short period of time?

Mr. Epstein: Objection.

Hearings Examiner: Sustained.

Mr. Frenkil: You heard what you perceived as two negative answers in a very short period of time, right?

Mr. Powell: Yeah, I guess. One of them was a conditional (inaudible).

Mr. Frenkil: Where is your desk in relationship to -
Where was your desk in relationship to

Vicki's?

Mr. Powell: Right behind Vicki.

Mr. Frenkil: We're were in a room that's 12 by, uh,...

Hearings Examiner: If that.

Mr. Frenkil: (Inaudible) or maybe they're three.
There's a short one. Nine by whatever.
A small room. Do you have partitions
between your desks?

Mr. Powell: Uhm um. (AFFIRMATIVE)

Mr. Frenkil: To the ceiling or the six foot high type
partitions?

Mr. Powell: Six foot high.

Mr. Frenkil: You can see over them cause you're tall.
The rest of us in this room can't, is
that a fair statement?

Mr. Powell: Right.

Mr. Frenkil: How far was Sandy's office from where you
were sitting?

Mr. Powell: Sandy's office sits right on an angle
from where I was sitting.

Mr. Frenkil: About ten feet away?

Mr. Powell: If that much.

Mr. Frenkil: And, about the same distance, really,
from Vicki's desk except for a partition
that's six feet high?

Mr. Powell: No. Because Vicki sits in front of me.
So if she was ten feet from me, she had

to be more than ten feet from Vicki.

Mr. Frenkil: About fifteen feet from Vicki?

Mr. Powell: Well, however far, you know, the desks are.

Mr. Frenkil: A few feet - five, six feet apart from desk to desk?

Mr. Powell: Yes, with the partition (inaudible).

Mr. Frenkil: And there's no question in your mind that you heard Vicki - Strike that. I'm sorry - There's no question in your mind that you heard Sandy instruct Vicki to come into her office?

Mr. Powell: Yeah, but when she instructed her, she wasn't at her desk. She was almost in Pam's office, which is further back.

Mr. Frenkil: Okay. About another eight feet away down the hall?

Mr. Powell: Yeah. Another eight to ten feet down past - Well, yeah. About eight feet from where Sandy sits.

Mr. Frenkil: Sandy was enflamed at that point in time, as you perceived it?

Mr. Powell: Yes.

Mr. Frenkil: She wasn't talking quietly, was she?

Mr. Powell: When she came - When she first passed Vicki and she want-- she said, "Vicki, can you come in here"...

Mr. Frenkil: That's when you were together, is that right?

Mr. Powell: No. That's when she was standing - The first time she said it - Well, the first time she said, when they were together, she asked Vicki, "Would you like to continue this in Pam's office?" The next time she said that, she was almost in Pam's office and she was back by the wall. And she said, "Vicki, can you come in here?"

Mr. Frenkil: Was it your perception that Sandy was irritated, even while you were talking? Even while Vicki was at your desk?

Mr. Powell: When she first came, no.

Mr. Frenkil: By the time the conversation ended?

Mr. Powell: By - Yeah. By the time it ended.

Mr. Frenkil: And that simply would be the same time that she asked Vicki if she'd like to come and discuss it somewhere else, right?

Mr. Powell: Right.

Mr. Frenkil: So your perception was that Vicki - that Sandy was irritated by that point?

Mr. Powell: Right.

Mr. Frenkil: All right. At one point in the conversation, you told Vicki, "Why don't

you go back to work," right?

Mr. Powell:

Right. Yes.

Mr. Frenkil:

Cause you perceived that Sandy was not very happy at this point in time, right?

Mr. Powell:

Right.

Mr. Frenkil:

It would be fair to say that you currently have a good relationship with the managers with whom you work?

Mr. Powell:

Correct.

Mr. Frenkil:

At that point in time, back at the time of the incident in question, you had had some hassles with your supervisors concerning their perception that you had a lateness or tardiness problem, isn't that correct?

Mr. Powell:

With my supervisors, you mean Pam and Sandy?

Mr. Frenkil:

Pam and Sandy.

Mr. Powell:

I don't know that I was having a problem with them about my tardiness in May.

Mr. Frenkil:

You had had one in the period just prior to that, is that a fair statement?

Mr. Powell:

I guess. Yeah.

Mr. Frenkil:

Would it be fair to say there'd been some tension between you and them prior to that period in time, prior to that May period in time, over their perception of

your absence and tardiness situation?

Mr. Powell: Maybe a little bit but it wasn't much and it wasn't - there wasn't any tension then, in May, when this took place.

Mr. Frenkil: You had been placed on probation, hadn't you?

Mr. Powell: Yeah, but that was...

Mr. Frenkil: Earlier that year?

Mr. Powell: That wasn't in the same year.

Mr. Frenkil: And wasn't a promotion held in abeyance, pending resolving those problems?

Mr. Powell: If it was, I didn't know that I was - I understood that when I went on probation, you can't be promoted while you're on probation but I didn't know that they were holding back promotion because I was on probation.

Mr. Frenkil: Just give me another minute or two.

PAUSE

Mr. Frenkil: Do you remember prior to Sandy asking Vicki if she could go back to work, Sandy asked Vicki if Sandy - Sorry - that Sandy asked Vicki if Vicki was on break? Do you remember that being asked by Sandy?

Mr. Powell: No. Not - No. (Inaudible).

Mr. Frenkil: Do you recall whether that it wasn't? (Inaudible)...

Mr. Powell: I don't remember her asking Vicki, "Are you on break."

Mr. Frenkil: Do you remember giving an answer to the first question as "Yes and no"?

Mr. Epstein: Well, I'm gonna object cause he said he can't remember the question at all. So how can he remember the answer to it?

Mr. Frenkil: I'm asking if there was a first question; whatever that happened to be. I'll rephrase it.

Hearings Examiner: Yes. Rephrase it, please.

Mr. Frenkil: Whatever the first question Sandy asked Vicki was, do you recall that the initial answer was, by Vicki, "Yes and no"?

Mr. Powell: Yeah. I think I remember hearing Vicki say yes and no.

Mr. Frenkil: I'll tell you that Sandy testified that when she first went up to Vicki, she asked Vicki if she was on break and Vicki's answer was "Yes and no." Would that refresh your recollection about what happened at the beginning of that conversation?

Mr. Powell: The first thing I heard in the conversation was Sandy asked Vicki if she could get back to her desk and do some work. I don't remember Sandy asking

Vicki were you on break.

Mr. Frenkil: And the answer to that initial question was conditioned upon the other people going back to work?

Mr. Powell: Right.

Mr. Frenkil: Okay. So there's some other question that came up sometime later in the conversation to which Vicki answered "Yes and no"?

Mr. Powell: Later in the conversation?

Mr. Frenkil: Yeah.

Mr. Powell: You mean did Sandy ask Vicki were you on break later in the conversation?

Mr. Frenkil: No. To some other question, whatever that question was, the answer was "Yes and no"?

Mr. Powell: Sandy could have asked Vicki that question before she got to my cubicle cause Vicki was standing right in the doorway to my cubicle. So Vicki would have seen Sandy before I did.

Mr. Frenkil: So what you're saying is it's possible that you didn't hear all the conversation between Sandy and Vicki, is that right?

Mr. Powell: I - Yeah. The first question I heard Sandy ask Vicki was, "Can you get back to your desk and do some work?"

Mr. Frenkil: Was it your perception that part of the conversation took place outside your cubicle and then continued coming into your direction?

Mr. Powell: No, (inaudible).

Hearings Examiner: I think he said he didn't know whether or not there was a conversation, but if there...

? (Inaudible).

Hearings Examiner: ...were, he didn't hear any answer.

Mr. Frenkil: Is it your perception that Sandy is an honest individual?

Mr. Epstein: Objection.

Mr. Frenkil: I think it's fundamentally at issue here.

Hearings Examiner: Overruled.

Mr. Frenkil: (Inaudible)...

Hearings Examiner: It's based on your (inaudible). Had she been honest with you?

Mr. Powell: Uhm,...

Mr. Frenkil: I can rephrase it if you'd like. Do you have any reason to believe that she is a person whose honesty is in question?

Hearings Examiner: He can only answer in terms of...

Mr. Frenkil: His own experience.

Hearings Examiner: ...his own experience with her.

Mr. Powell: I'm not gonna sit here and say that Sandy is a liar because I don't - I don't know

her well enough to say that Sandy is a liar, but based on my experience with her - there have been some things that happened that I questioned. I'm talking about personal things between me and her. So, I'm not gonna say...

Hearings Examiner: Okay. He's not in a position to form an accurate opinion.

Mr. Frenkil: Well, I'd like to pursue it with the answer to it, if I might. What kinds of things happened between you...

Mr. Epstein: Well,...

Mr. Frenkil: ...and Sa-- I (inaudible).

Mr. Epstein: I'm gonna object because this is...

Hearings Examiner: Yeah. Uh,...

Mr. Epstein: ...completely collateral (inaudible).

Mr. Frenkil: Well, it's hardly collateral.

Mr. Epstein: We're getting into absolutely (inaudible)...

Hearings Examiner: No. I'm gonna sustain the objection because he can't form an opinion as to this person's honesty except in terms of...

Mr. Frenkil: Okay. I'm not pursuing (inaudible)...

Hearings Examiner: ...(inaudible) and he's unable to form one.

Mr. Frenkil: ...I am pursuing issues of perspective.

And I think since this has been set up as basically a one witness presentation, I want to understand the full flavor of the witness' background. What incidents have occurred between you and Sandy...

Mr. Epstein:

Objection.

Hearings Examiner:

Overruled. I'm going to monitor this carefully.

Mr. Frenkil:

What incidents have occurred between you and Sandy that would cause you to raise questions about your own dealings with her?

Mr. Powell:

There was an incident where we went to lunch once. And we came back from lunch - And we didn't know when we went to lunch that we were gonna be late coming back. Pam was out on maternity leave. And when we came back from lunch, before we took our coats off, Sandy called us in and said, "I want to talk to you all."

Mr. Frenkil:

Who were the people involved?

Mr. Powell:

Vicki, myself and Wanda Thomas and Jerry Gordon.

Mr. Frenkil:

And, uh - And, did she criticize you all for being late? Is that the issue?

Mr. Powell:

Yes.

Mr. Frenkil:

And you thought she wasn't being

particularly candid about her evaluation of what really happened?

Mr. Powell:

No - Well, I told her in the past, whenever I've come in late, I've always come to you and said that I'm late and I'm gonna make up this time but you didn't give me a chance to do that this time. You didn't even let me take off my coat.

Mr. Frenkil:

Anything else that happened between you and Sandy that would cause you to question whether she dealt with you in a fair or candid way?

Mr. Powell:

No.

Mr. Frenkil:

So, other than that one incident you agree, then, that you have no reason to question whether she's dealt with you in a fair or candid way?

Mr. Powell:

(Inaudible), no, I don't know.

Hearings Examiner:

Excuse me.

SIDE TWO

Hearings Examiner:

Side Two. I think it's record three, 8908242, Vicki Jefferson. Go ahead, Mr. Frenkil.

Mr. Frenkil:

There are no other facts you would have involving you that would cause you to question Sandy's reliability or fairness

with you?

Mr. Powell:

No.

Mr. Frenkil:

Any other facts you would have or experiences you would have upon which to question her fairness or reliability with Vicki Jefferson other than the facts you testified to here today?

Mr. Powell:

Do I know of anything else that happened between Vicki and Sandy that would cause me to question Sandy's fairness?

Mr. Frenkil:

Or reliability.

Mr. Powell:

Uhm, I think only the fact that Vicki, being diabetic and when she went into her incidences, Sandy would overreact. And instead of doing - or letting - Cause I knew that Vicki had a sugar problem. I had talked to her mother. And her mother told me and Vicki even told me herself, just put some sugar in her mouth. And Sandy would get really offended when Vicki had a sugar attack. And one day she said, "I don't need this today. I'm the only one here," cause Pam wasn't there.

Mr. Frenkil:

Were you aware that Sandy and Vicki, and Pam and Vicki had had conversations concerning the out - the doctor's

expectations for Vicki in self-controlling her sugar intake? Were you aware of those conversations?

Mr. Powell:

No.

Mr. Frenkil:

Okay. Anything else that you'd aware of that would cause you to question the reliability or fairness of Sandy to Vicki other than what you've testified to here today?

Mr. Powell:

No. Other - No. Other than other incidences when she would be standing around talking with other people and she would she come on the other side and say, "Get back to work"...

Mr. Epstein:

I - Who is "she"?

Mr. Powell:

Sandy. Sandy would be standing around talking to other people and if you were talking, she would come up to you and say, "Could you get back to work".

Mr. Frenkil:

Other than that? I have nothing else. Thank you.

Hearings Examiner:

Rebuttal?

Mr. Epstein:

On this particular morning, who - You said that Vicki referred to peo-- that she would go back to work "when the people over there went back to work," is that right?

Mr. Powell: Uhm um. (AFFIRMATIVE)

Mr. Epstein: Were - Uh, when you say "people over there," who are you referring to?

Mr. Powell: Who am I referring to?

Mr. Epstein: Who was she referring to?

Mr. Powell: Well,...

Mr. Epstein: "Who were the people over there"?

Mr. Powell: It was a lot of people over there. Sandy - When I - Sandy was standing at Chris Eder's desk and Chris Oliver was up there at Chris Eder's desk but there were other people over there, too, (inaudible)...

Hearings Examiner: Well, were these people - I mean did Sandy supervise those people, also?

Mr. Powell: Uhm um. (AFFIRMATIVE)

Hearings Examiner: And so they weren't other supervisors talking among themselves?

Mr. Powell: No.

Hearings Examiner: Other employees supervised by Sandy?

Mr. Powell: Right.

Hearings Examiner: Okay.

Mr. Epstein: And how long had those people been standing over there talking?

Hearings Examiner: If you know.

Mr. Powell: Uhm, I have no idea. I wasn't timing...

Mr. Epstein: Okay. Well, earlier that same morning, had you seen any other people standing

around in the office talking?

Mr. Powell: Earlier in the morn--LAUGHTER-- Yeah. I mean you see people - You go to the work station, you see people talking. When you go put some work out, you see people talking. But, you don't pay that no attention.

Mr. Epstein: Is there a rule in the office that says that people are not permitted to talk while they're working?

Mr. Powell: No. No, not that I know of.

Mr. Epstein: Is there any rule that says that people have to stay at their desks every moment while they're at work except when they're on break or at lunch (inaudible)?

Mr. Powell: No. Not - No.

Mr. Epstein: Okay.

Mr. Powell: That we have to stay at our desks unless you're on break or lunch?

Mr. Epstein: Right. Is there any rule that says that you can't get up and go to an adjacent - another employee's desk and have a short conversation and get back to work...

Mr. Powell: No. (Inaudible)...

Mr. Epstein: ...as long as you're getting your work done?

Mr. Powell: Exactly. No. We (inaudible).

Mr. Epstein: Okay. And was that the practice on May 26th and before May 26th?

Mr. Powell: Yes.

Mr. Epstein: Okay. And that's still the practice today?

Mr. Powell: Yes.

Mr. Epstein: Uh, one second, please. When, when Sandy - You said Sandy went almost into Pam's office and then came back out and said in a loud voice to Vicki, "Come into the office," is that right or words to that affect?

Mr. Powell: Right.

Mr. Epstein: What exactly did Vicki do when Sandy said that?

Mr. Powell: I was sitting at my desk but I saw her when she walked past my desk to go into Pam's office.

Mr. Epstein: Okay. Was there any period - Did she say anything before she got up and went in there?

Mr. Powell: No.

Mr. Epstein: Was there any period of time before she got up to go in?

Mr. Powell: No.

Mr. Epstein: Okay. So she immediately got up and went in after Sandy said that?

Mr. Powell: Yes.

Mr. Epstein: Nothing else.

Mr. Frenkil: Uhm, would it be accurate to say that while you do know that Vicki was talking to you about matters other than work, when she was talking to you after she first covered the work project, you don't know what the other people across the office was talking about, is that right?

Mr. Powell: I may not have known what everybody was talking about but there were certain conversations you could hear. I'm not gonna say that I know who was saying what.

Mr. Frenkil: Okay.

Mr. Powell: But it was certain conversations that you could overhear and they weren't talking about work, either.

Mr. Frenkil: And you (inaudible) were talking about which topics, is that correct?

Mr. Powell: Right.

Mr. Frenkil: Is your desk close enough to hear the telephone calls of the people working near you?

Mr. Powell: Uhm, only if the printers are not on.

Mr. Frenkil: Were the printers on that day?

Mr. Powell: Yes.

Mr. Frenkil: Do you know whether - Strike that. If Sandy testified that Vicki was on the telephone a great deal between 8:45 and 10:35 that morning, would you have any facts with which to dispute that testimony?

Mr. Powell: I wouldn't know.

Mr. Frenkil: I have nothing else.

Hearings Examiner: Okay. Mr. Frenkil, argument?

Mr. Frenkil: Just very briefly. Here's a case basically involving the question of whether it's misconduct in connection with the work. The testimony of two supervisors, specifically the first one to be on the scene on that occasion, Sandy Vernago. It was a very specific incident, an apt phrase by Mr. Powell in his own statement, that occurred that morning but it wasn't the only incident. There were a series of things that happened over a period of time involving counseling, involving warnings, involving failure to follow rules regarding being out of work, being late for work, calling in for work - almost heroic efforts to accommodate the employee's personal physical disability

and apparently her inability or unwillingness to cope with a difficult medical problem, resulting in a variety of fainting episodes. Discussions with her doctor initiated by the company to find out how they could accommodate her; changing the schedule, working at, eating at her desk - a whole variety of exercises. Not an employer looking to make up something to get her out the door. On the day in question, indeed, the very conversation that Vicki Jefferson had, according to the witness brought here today, was about the topic about which she'd been counseled in the past, getting to your desk and doing your work. And she's talking about the other people with Mr. Powell who were not at their desk and doing their work. The unrefuted testimony is that on two separate occasions in that conversation, she did not say yes when asked to do something by her supervisor. The first one, if not given a sarcastic - she was not asked sarcastically to go back to work. She was asked in a pleasant voice. And her answer was not yes, I'll

get back, knowing full well she'd been counseled on the very things she was doing, but her answer was no - It was, "Yes, I'll go back when those people go back to work." So, the first negative response, at least, was there, if not an earlier one that Mr. Powell has no recollection of today, but Ms. Vernago has testified to without contradiction. The first one being, she said are you on break and the answer was yes and no. So, we have at least one, probably two, negative responses at that point in time. And now when the comment was made clearly by someone getting irritated - and as Mr. Powell said at the end of the conversation the question was, "Would you like to come into my office to continue this conversation," Ms. Vernago was irritated and not reflecting pleasantness and coolness, evidencing the irritation of a supervisor, the answer was no. So, at least two and possibly three times in that conversation that employee declined to participate in following the directions of a manager. Finally, Mr. Powell's own testimony is that Ms.

Jefferson's physical location at the time that Sandy came out the first time to say come into this office, they were no more than twenty feet away. They were ten feet, plus eight, plus a few more. He could hear clearly that Ms. Vernago - Sandy - was even more irritated at this point. And when she next said it, she was enflamed according to the testimony. And nothing is inconsistent (inaudible) that at the end of a lengthy, multi-month process, this employee was evidencing that she conditioned her - coordinating her response to management based upon her view of what others she should be doing and what she should be doing. She didn't say yes. She didn't cooperate and she was terminated for gross misconduct.

Hearings Examiner:

Thank you. Mr. Epstein?

Mr. Epstein:

First of all, as far as why Ms. Jefferson was actually terminated, I think it's absolutely clear that she was terminated not because of some prior series of incidents but because of what happened on May 26th. And in support of that, first of all, I point out that there was a lot

of testimony at the prior hearing concerning her medical problems, the employer's efforts to help her cope with her medical problems and her efforts to cope with her own medical problems. The situation had been resolved and there had been virtually no problems, I believe, for over a month prior to this incident. There was also some testimony at the prior hearing concerning alleged problems with Ms. Jefferson's performance and her production. And I would simply point out that despite the fact that the employer's introduced numerous records dealing with Ms. Jefferson's problems with lateness and absenteeism caused basically by her medical condition, that the employer failed to introduce any records whatsoever indicating that there was any problem with Ms. Jefferson's production or her performance. Evidently, based on the evidence in this record, Ms. Jefferson's performance and her production were what they were supposed to be. So, she was not terminated for any problems connected with that. Finally, we had the testimony

of Pam Sober who testified that on May 30th, 1989 she called Ms. Jefferson in and told her she was being fired and this is virtually a direct quote, "because of what happened last Friday." Not because of a series of events. "Because of what happened on Friday." So, I think despite all the efforts of the employer to make this look like it was a culmination of a whole series of events, what we need to focus on are the events of that Friday. When we look at the events of that Friday, what we have, basically, is a situation where according to Mr. Powell's testimony and Mr. Powell's testimony here has been absolutely unimpeached in any fashion - he's still working for this same employer. I don't think there's any reason why he would come in and be less than truthful concerning what happened that day. According to his testimony, other people had been talking - standing around talking. (Inaudible) at this very moment, other people were standing in another part of the office, talking about things that he couldn't hear the exact content of the conversation but he was

able to determine that it didn't have anything to do with work. There's no rule that says that employees are glued to their desk and that they're not permitted to say anything that doesn't have to do with work. It's a practice that employees can get up, have brief conversations with other employees, go back to their desks and get their work done. The key thing is that the work is getting done. And, as I said, there's no evidence here that the work was not getting done. We have Ms. Vernago coming over after participating in conversation herself, according to Mr. Powell, with these other people on the other side of the room, coming over and telling Ms. Jefferson specifically to get back to work. Ms. Jefferson testified last time that she felt that she was not being treated fairly and accordingly she made a statement that said, basically, "I don't feel I'm being treated fairly." What she said, specifically, according to everybody who testified is, "I'll get back to work when these other people get back to work." At that point, Ms.

Vernago testified - At that point Ms. Vernago said, "Would you like to continue this conversation in Pam's office?" And according to Mr. Powell, that was not phrased as a command. It was phrased as a question. And Ms. Jefferson was being given an option at that point to continue the conversation or to not continue the conversation. In other words, Ms. Vernago was basically saying if you feel that there's a problem, then, do you want to come into the office and talk with me about it. And Ms. Jefferson declined to do that. At that point, Ms. Vernago heads back to Pam's office, where she was working that day cause Pam was not there, and before walking in, she had second thoughts. She turns around and she says in a conversational tone of voice, "Come into the office." And Mr. Powell's testimony was that he was sitting closer to Ms. Vernago than Ms. Jefferson was and Ms. Jefferson may not have been able to hear that. And at that point, Ms. Vernago says in no uncertain terms, "Come into Pam's office. I want to talk with you." And at that point, Ms. Jefferson

does exactly what she's required to do. She gets up immediately and walks - without another word, walks into Pam's office. And according to Ms. Vernago's testimony and Ms. Jefferson's testimony, the two of them had a conversation. At the end of that conversation, Ms. Jefferson goes back to work and that's basically the end of the incident, at least as far as Ms. Jefferson is concerned, but not as far as the employer is concerned. The employer ultimately terminates her because of that specific incident. Whatever else we have here, I certainly don't think we have misconduct under the- under Article 95, Section 6(c). Certainly, much less, gross misconduct. Misconduct is a transgression of some established rule or policy of the employer or a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employer's premises. What you have here is an employee who, on this particular occasion, feels she's being treated unfairly, (inaudible) to the - to her supervisor's request to talk about

it. And when commanded to come in and talk about it, she does so. And, uh, accordingly, I don't think there's any misconduct, certainly no gross misconduct. And I feel that the initial decision made by the hearings examiner should be reversed.

Hearings Examiner:

Thank you very much. The hearing is adjourned. You'll each receive a written copy of my decision by mail as soon as possible.

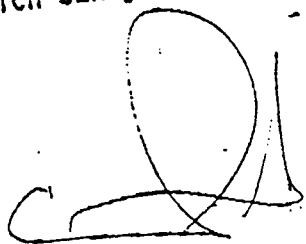
EX # 1A

To Whom It May Concern:

I, Gregory Powell, do certify the following to be a true and accurate account, to the best of my knowledge, of events pertaining to an incident between Vicki Jefferson and Sandy Vernago on May 26, 1989.

On May 26, 1989, somewhere between 10:00 and 11:00 A.M. Vicki was standing at my desk talking to me when Sandy came around to my desk and asked Vicki if she could do some work. Vicki said, "Yes, I can" and Sandy asked Vicki to do some work then. Vicki asked Sandy how she could tell Vicki to get back to work when everyone else on the other side of the room was talking and not working either. Sandy told Vicki not to worry about everybody else and then asked Vicki if she would like to continue this discussion in her office.* Vicki said "No, I Sandy went into her office and then came back out and asked Vicki to come into her office. Vicki got up from her desk and went in Sandy's office and Sandy closed the door. Vicki came out later and went back to work and Sandy went back to whatever she was doing. Everything seemed to get back to normal, so I thought.

* Sandy's office is actually Pam Sober's (Department Manager) office which Sandy was using since Pam was off that day.



Gregory Powell

APPEALS DIVISION	1
Exhibit No.	1
For Identification Only	
As Evidence p. 1 of 1	

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 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

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

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

REMAND
— DECISION —

Date: Mailed: 03/7/90
Appeal No.: 8908242
S. S. No.: 216-96-1356
LO. No.: 45
Appellant:

Claimant: Vicki L. Jefferson Poindexter
8408 Maymeadow Ct.
Baltimore, MD 21207

Employer: Alexander & Alexander, Inc.
Hampton Plaza
300 E. Joppa Rd.
Baltimore, MD 21204

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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

March 16, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present
Represented by:
George A. Epstein, Esq.

FOR THE EMPLOYER:

Represented by:
Rita Johnson,
Senior Human Resources Rep.
Pamela Sober,
Manager of Word Processing
Sandy Vernago,
Supervisor of Word Processing
Steven Frenkil, Esq.

Subpoenaed Witness:
Gregory Powell

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The above entitled matter was remanded for de novo hearing by the Board of Appeals due to the absence of the hearing tape. Two hearings were held on the above entitled matter. The second hearing was held for the specific purpose of affording the claimant an opportunity to subpoena a witness on her behalf. At the second hearing, the counsel for the parties summarized their positions and argued in summation. Opportunity for summation was reserved to the second hearing.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at the Northwest local office, effective May 28, 1989.

The claimant had been employed by Alexander & Alexander, Inc., from October 5, 1987 to May 30, 1989, as a word processor, at a monthly pay rate of \$1,244.60.

On May 26, 1989, the claimant was observed by her supervisor, Sandy Vernago, talking with a co-worker, Mr. Gregory Powell. The supervisor asked the claimant if she could return to her desk and go to work. The claimant responded that she could, as soon as the other persons across the room, who were idly chatting, went back to work. The supervisor gave the claimant no further direct order to return to her desk. The supervisor did not ask the claimant whether she was discussing company business with Mr. Powell. The supervisor asked the claimant if she would like to continue the conversation in the manager's office. The claimant answered that she did not wish to continue the discussion. The supervisor walked away. However, the supervisor apparently had second thoughts about the situation and she demanded that the claimant follow her into the manager's office to privately discuss the situation. The claimant obliged and followed the supervisor into the manager's office. The two of them discussed the situation.

The supervisor then reported the matter to Pamela Sober, the Word Processing Manager. The claimant was then informed on the next business day that she was being discharged for insubordination.

I find as fact that the claimant did not directly disobey a reasonable order given to her by her supervisor.

CONCLUSIONS OF LAW

The evidence is clear that the claimant offered an undesirable retort to the supervisor's inquiry if she could return to her desk and go to work. There was never a director order or command given by the employer that was not complied with by the this employee. The facts in the instant case do not rise to the level of insubordination. The claimant was invited to attend a private session with a supervisor, who discussed certain matters pertaining to her work and being away from her desk. The

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claimant declined to accept the invitation. However, when the claimant was commanded to report to the manager's office for a private discussion, the claimant immediately complied. Therefore, no insubordination has occurred in the instant case. Accordingly, there is no basis for a finding or conclusion of gross misconduct connected with the work. Article 95A, Section 6(b) provides for a disqualification from benefits where an employer's discharge was for an action which constitutes a deliberate and willful disregard of the standards of behavior, which the employer has a right to expect or a series of repeated violations of employment rules, which show a regular and wanton disregard of the employment obligations. Therefore, the provisions of Section 6(b) of the Maryland Unemployment Insurance Law do not apply here.

Neither do the provisions for disqualification under Section 6(c) apply here. Only where there is a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed, within the scope of the employment on the employer's premises, will a disqualification attach under this Section. The probative credible evidence in the instant case does not support a conclusion that the claimant's actions rise to the level of misconduct, within the meaning of the Statute.

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 upon this separation.

The Claims Examiner's determination is hereby reversed.

Robin L. Brodinsky/ce
Robin L. Brodinsky
Hearing Examiner

Date of Hearing: 2-16-90
cr/Specialist ID: 45557
Cassette No: 718a&b 455a&b

Copies mailed on 3/1/90 to:

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Employer

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Board of Appeals

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c/o George A. Epstein

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March 15, 1990

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O. NEIL S. KING

WRITER'S DIRECT DIAL

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HAND DELIVER

Board of Appeals
Department of Economic & Employment Development
Room 515, Appeals Division
1100 North Eutaw Street
Baltimore, Maryland 21201

Re: Claim of Vicki L. Jefferson Poindexter -
Decision No.: 8908242; Social Security No. 216-96-1356

Dear Members of the Board of Appeals:

On behalf of Alexander & Alexander Inc. ("A&A"), the employer in the above-referenced matter, I am filing this Notice of Appeal. A&A respectfully requests a hearing before the Board of Appeals.

A. Additional evidence is available central to section 6(b) and 6(c) determinations. There is additional eye-witness evidence described herein that bears directly on the Section 6(b) and 6(c) issues relating to whether or not insubordination occurred. A&A respectfully requests the opportunity to present this evidence at a hearing.

Prior to the conclusion of the hearing before the Hearing Examiner, the Claimant's attorney requested an opportunity to subpoena a company employee, Gregory Powell, to testify on behalf of the Claimant. The Claimant previously had testified that she had a friendly relationship at work with Mr. Powell. There were two other A&A employees who were eye-witnesses to the events in question and who the company wanted to testify at the hearing. These two employees requested that they not be required to testify unless it was absolutely necessary. A&A did not believe it should require or subpoena its own non-managerial employees to involuntarily attend the appeals hearing, given

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Board of Appeals
Department of Economic & Employment Development
March 15, 1990
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their request. Therefore, A&A was compelled to proceed at that hearing with its hands tied -- without the benefit of key testimony.

Because the decision of the Hearing Examiner was adverse, it is now absolutely necessary to have the testimony of those two eye-witnesses. Copies of their affidavits (previously submitted to the Board of Appeals in August, 1989) are appended hereto as Attachments A and B; those affidavits summarize very briefly the facts to which they would testify. The testimony of these two employees will show that the Claimant did ignore or reject the directives to go back to work and did refuse to meet privately with Sandy Vernago, the Claimant's supervisor.

Accordingly, A&A respectfully requests a hearing before the Board of Appeals at which evidence for the parties may be presented pertinent to the issues on appeal.

B. The decision fails to consider all of the evidence, and the conclusions of the decision contradict the record. The decision issued by Hearing Examiner Robin L. Brodinsky should be reversed because it fails to consider all of the evidence and its conclusions are contradicted by the record. The decision is erroneous because it concludes:

The evidence is clear that the claimant offered an undesirable retort to the supervisor's inquiry if she could return to her desk and go to work. There was never a direct order or command given by the employer that was not complied with by this employee. The facts in the instant case do not rise to the level of insubordination. The claimant was invited to attend a private session with a supervisor, who discussed certain matters pertaining to her work and being away from her desk. The claimant declined to accept the invitation. However, when the claimant was commanded to report to the manager's office for a private discussion, the claimant immediately complied.

The first of a series of insubordinate acts occurred when the Claimant was seen by her supervisor, Ms. Vernago, conversing with Mr. Powell. It is clear from the record that the claimant's response was not a mere "undesirable retort", but a rejection of a direction to work. The Claimant admitted that she was standing at the desk of Mr. Powell, her co-worker, and that the

SEMMES, BOWEN & SEMMES

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conversation had become a social one, despite the fact that she was on duty and not on a break. She admitted that she told her supervisor, Ms. Vernago, that she would not go back to work until the employees across the office stopped talking. Her witness, Mr. Powell, testified that she expressly and specifically conditioned her willingness to go back to work on the conduct of other employees. It is thus apparent that the Claimant did not merely give an "undesirable retort" -- she rejected her obligation to go back to work despite repeated instructions to cease her misconduct.

Following that altercation (or "incident" as Mr. Powell himself called it), another separate series of insubordinate acts occurred. Ms. Vernago directed that the Claimant meet with her in a private office to discuss her misconduct, but insubordination occurred again when the claimant repeatedly refused to meet, until she finally conceded. See Attachments A, B and C. As with the first series of insubordinate acts (regarding the Claimant's failure to go back to work), the Claimant had to be instructed repeatedly until she even agreed to meet in a private office with her superior.

The Decision's conclusion that the Claimant was merely "invited" to attend a private meeting is flatly inconsistent with the evidence presented and is further undermined by the evidence held by the two eye-witnesses whose affidavits are appended as Attachments A and B. Their testimony is essential in determining whether or not the facts of this case support Section 6(b) or 6(c) disqualification.

C. Conclusion. Accordingly, A&A respectfully submits that the Decision should be reversed and further requests that a hearing be held so that all pertinent evidence can be submitted for consideration by the Board of Appeals.

Very truly yours,


Steven D. Frenkil

SDF:sa

Enclosures
a/s

cc: Alexander & Alexander Inc.
George A. Epstein, Esquire (Claimant's counsel)

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BEFORE THE
BOARD OF APPEALS
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT
BALTIMORE, MARYLAND

In the Matter of
Vicki L. Jefferson (Poindexter) Decision No.: 89-082-42

* * * * *

AFFIDAVIT

CHRISTINE EDER, being duly sworn, deposes and says:

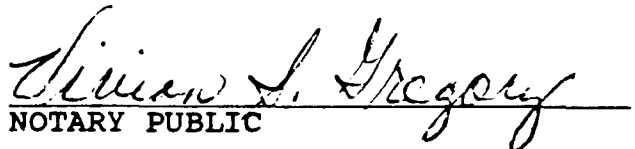
1. I am over the age of eighteen (18) years and have personal knowledge of the following matters.
2. On May 26, 1989 I overheard a conversation between Vicki Jefferson and Sandy Vernago in which Sandy, over a period of 2 hours, repeatedly asked Vicki and Gregg Powell to stop talking and start working. The first time Sandy asked in a very professional manner. After a 1/2 hour or so, Sandy again came over and asked them to get to work which neither one paid attention to her. The third time Sandy came over and asked Vicki if she had planned on working at all that day and Vicki's reply was "Don't worry what I'm doing", at which time Sandy told Vicki that she wanted to talk to her in Pam's office. Vicki told her she didn't feel like discussing it. Sandy said that she felt a discussion was necessary, but Vicki refused a second time. The third time Sandy very loudly told her to get into Pam's office immediately, at which time Vicki went in.

3. I heard this conversation very clearly because I sit right on the other side of the partition where all of this took place. From what I could hear, Sandy handled the situation in a very professional manner and Vicki responded in a very rude, disrespectful manner.


CHRISTINE EDER

Sworn to before me this 29th day of August 1989.

My commission expires:


NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 1, 1990

BEFORE THE
BOARD OF APPEALS
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT
BALTIMORE, MARYLAND

In the Matter of

Vicki L. Jefferson (Poindexter)

Decision No.: 89-082-42

* * * * *

AFFIDAVIT

CHRISTINE OLIVER, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and have personal knowledge of the following matters.
2. On Friday, May 26, 1989, Vicki Jefferson and Gregg Powell had been talking on and off for about two hours. Around 11:00 I overheard Sandy ask Vicki if she was going to work today, she said, "maybe, if I feel like it".
3. Sandy said something about they had been talking all morning, and Vicki replied with "don't worry about what I do". At that time, I think Gregg tried to defuse the situation by telling Vicki that maybe she should go sit down. There were several printers running at this time and I didn't hear what was said until Sandy requested that Vicki step into Pam's office with her. She said she didn't want to. The next thing I heard was Sandy loudly asking Vicki to go into Pam's office with her; which she did.

Christine Oliver
CHRISTINE OLIVER

Sworn to before me this 27th day of August 1989.

My commission expires:

Vivian S. Groopman
NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 1, 1990

MEMORANDUM

May 30, 1989

TO: FILE

FROM: Sandy Vernago
WP Supervisor

Sandy Vernago

RE: May 26, 1989 - Vicki Jefferson

On Friday morning I asked Vicki for a doctor's note because she had been out for two days due to a car accident in which she passed out and totaled her car (on Thursday she stated she would bring one in). Her reply was that she didn't have it with her. I called Rita Johnson in Personnel to ask her if I was right to ask this of her. She told me to tell Vicki to make sure she brought the note in on Tuesday (Monday was a holiday).

I noticed from approximately 8:45 a.m. to 10:35 a.m. that Vicki was on and off the phone and away from her desk a lot. Around 10:35 a.m. Vicki was at Gregg's desk and I asked her if she could possibly go back to work. At that time she just looked at me and I asked her if she was on break. Vicki said "yes and no". I then asked her again and she said "maybe I don't feel like going back to work". Vicki then said "how can you approach me when everyone else is talking, including you?" I then stated that it was not her concern. During this time, Gregg motioned for Vicki to drop it and go back to her desk. I asked Vicki to come into Pam's office so we could discuss the problem. I asked Vicki again (second time) to come into Pam's office. She said "no, I don't want to". I then said "I am tired of this" and at that time (third time) I said, "come into Pam's office now!". We proceeded into Pam's office. I told Vicki that I was her Supervisor and that I had let the problem go on for what I thought was an extreme amount of time. She questioned my job and said "you are being unfair to me". I said "I treat everyone fairly in this department". She also stated that she knew everything that went on in this department and that was how she arrived at the fact that I was treating her unfairly. I told Vicki that I am not at liberty to discuss any problems with anyone that arise in this department and that she didn't know everything that went on (I was referring to the reason others may have been in discussion). I stated "if you have a problem with me then you can go to my Manager, Pam Sober and we can discuss the problem." Vicki then said "there is no problem". I told her that she should stop worrying about others and just worry about herself.

During this discussion, Vicki said "I don't want Pam calling me into her office on Tuesday to discuss this, because I don't feel like talking about it". I then informed Vicki it was my responsibility to inform Pam of the problem and that if she was called into Pam's office on Tuesday she would have to deal with the problem then.

MEMORANDUM

May 30, 1989

TO: FILE

RE: May 26, 1989 - Vicki Jefferson

Page Two

Vicki also told me during this dicussion that she had a dr's. appt. on Tuesday at 2:00 p.m., which meant that she would have to leave at 1:00 p.m. The week before she informed me that she had a dr's. appt. on Wednesday at the same time and she would have to leave at the same time as Tuesday. Vicki was told that she was supposed to make all her appointments in the evening. Her doctor had previously informed Pam Sober that Vicki could make appointments in the evening.

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.
VICKI L. JEFFERSON POINDEXTER	ALEXANDER & ALEXANDER, INC.	03/27/90	8908242	216-96-1356

EMPLOYER

045

Appellant:

The Board of Appeals has received an appeal in this case. The Board may deny a petition for review, it may decide ~~the~~ 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:

VICKI L. JEFFERSON POINDEXTER
8408 MAYMEADOW COURT
BALTIMORE, MD 21207

PAUL G. ZIMMERMANN

COUNSEL

Copies Mailed To:

ALEXANDER & ALEXANDER, INC.
LEGAL DEPT. ATTN: M GALLAGHER
10451 MILL RUN CIRCLE
OWINGS MILLS, MD 21117

GEORGE A. EPSTEIN, ESQUIRE
100 E. LEXINGTON STREET
BALTIMORE, MD 21202

STEVEN D. FRENKEL, ESQUIRE
SEMMLER, BOWEN & SEMMES
250 WEST PRATT STREET
BALTIMORE, MD 21201

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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
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VICKI L. JEFFERSON POINDEXTER	ALEXANDER & ALEXANDER, INC.	03/27/90	3908242	216-96-1356

EMPLOYER

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BALTIMORE, MD 21201

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DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

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Claimant's Name	Employer's Name	Date	Appeal No.	SS No.
VICKI L. JEFFERSON POINDEXTER	ALEXANDER & ALEXANDER, INC.	03/27/90	8908242	216-96-1356

EMPLOYER

043

Appellant:

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Mail To:

GEORGE A. EPSTEIN, ESQUIRE
100 E. LEXINGTON STREET
BALTIMORE, MD 21202

PAUL G. ZIMMERMANN

COUNSEL

Copies Mailed To:

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8408 MAYMEADOW COURT
BALTIMORE, MD 21207

ALEXANDER & ALEXANDER, INC.
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SEMMLES, BOWEN & SEMMES
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BALTIMORE, MD 21201

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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.
VICKI L. JEFFERSON POINDEXTER	ALEXANDER & ALEXANDER, INC.	03/27/90	8908242	216-96-1356

Appellant: EMPLOYER

045

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BALTIMORE, MD 21202

226

LAW OFFICES
ROCHLIN AND SETTLEMAN P. A.

110 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-1784

ROCHLIN, SETTLEMAN & GOLDMAN
308 SECOND STREET
LAUREL MARYLAND 20707
(301) 792-7440

(301) 539-3070
TOLL FREE: (800) 342-5983
TELECOPIER: (301) 837-7430

THE PATRICK CENTER
SUITE 500
30 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

March 30, 1990

RECEIVED

APR 2 1990

Board of Appeals
Department of Economic & Employment Development
Room 515, Appeals Division
1100 North Eutaw Street
Baltimore, Maryland 21201

OFFICE OF BOARD APPEALS

Re: Claim of Vicki L. Jefferson Poindexter
Decision #: 8908242 SS#: 216-96-1356

Dear Members of the Board of Appeals:

This letter is in response to the Notice of Appeal dated March 15, 1990, filed by the attorney for the Employer in this matter. On behalf of the Claimant, I am requesting that the decision of the Hearing Examiner be affirmed on the basis of the evidence previously taken in this case and without any further hearing, pursuant to Article 95A § 7(f) of the Annotated Code of Maryland.

In his letter, the Employers' attorney states two grounds for the Appeal. The first is that additional evidence is available which has not previously been presented on behalf of the Employer. This evidence consists of the testimony of two employees of the Employer who were allegedly eye-witnesses to the events which resulted in the Claimant being discharged. The facts show that the Employer had a full opportunity to present this evidence and freely chose not to do so. By making this choice, the Employer has waived any right to present this evidence. In his letter, counsel for the Employer states:

These two employees requested that they not be required to testify unless it was absolutely necessary. A&A did not believe it should require or subpoena its own non-managerial employees to involuntarily attend the Appeals Hearing given their request. Therefore, A&A was compelled to proceed at that hearing with its hands tied -- without the benefit of key testimony.

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Board of Appeals
Department of Economic & Employment Development
March 30, 1990
Page Two

Re: Claim of Vicki L. Jefferson Poindexter
Decision #: 8908242 SS#: 216-96-1356

Because the decision of the Hearing Examiner was adverse, it is now absolutely necessary to have the testimony of those two eye-witnesses.

Contrary to the assertion that the Employer was "compelled to proceed at [the] hearing with its hands tied", the Employer clearly made a free and voluntary decision to proceed without the testimony of these two witnesses. The two witnesses were its own employees. As the Employer's attorney himself states, the Employer could have required or subpoenaed these witnesses to attend the hearing. However, the Employer made the choice to honor their request not to attend the hearing. The Employer obviously gambled that it could win a favorable decision without their testimony. Having lost that gamble, the Employer now is asking for an opportunity to avoid the consequences of its own decision.

The Claimant has had to attend two full hearings in this case. At each hearing, she has obtained a favorable decision. The results of the first hearing were set aside because, through no fault of the Claimant, the record of the hearing could not be located for purposes of appeal. Now, having suffered an adverse decision at the second hearing, the Employer is seeking to make the Claimant undergo yet a third hearing. The Employer has had every opportunity to present whatever evidence it thought was pertinent in this case, and it would be patently unfair to require the Claimant to undergo another hearing.

Contrary to the contention of the Employer that the decision of the Hearing Examiner should be reversed because it fails to consider all of the evidence and its conclusions are contradicted by the record, the decisions and conclusions are entirely consistent with the record. The Hearing Examiner had the opportunity to see and hear the witnesses who were presented and to judge their credibility. The record shows that he questioned the witnesses to determine exactly what happened in this case, and that he fully understood what the issues were. His decision that

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APR 2 1990

OFFICE OF BOARD APPEALS

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ROCHLIN AND SETTLEMAN A.

Board of Appeals
Department of Economic & Employment Development
March 27, 1990
Page Three

Re: Claim of Vicki L. Jefferson Poindexter
Decision #: 8908242 SS#: 216-96-1356

there was no misconduct on the part of Claimant was correct, is fully supported by the record, and should be affirmed without the necessity for further hearing in this matter.

Very truly yours,

ROCHLIN & SETTLEMAN, P.A.



George A. Epstein

GAE:tmc

cc: Steven D. Frenkil, Esquire
Ms. Vicki L. Poindexter

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APR 6 1990

OFFICE OF BOARD APPEALS

229

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

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

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

— DECISION —

	Decision No.:	480 -BR-90	
	Date:	May 14, 1990	
Claimant:	Vicki L. Jefferson Poindexter	Appeal No.:	8908242
	8408 Maymeadow Court		
	Baltimore, MD 21207	S. S. No.:	216-96-1356

Employer:	Alexander & Alexander, Inc.	L. O. No.:	45
	Legal Dept. Attn. M. Gallagher	Appellant:	EMPLOYER
	10451 Mill Run Circle		
	Owings Mills, MD 21117		

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON June 13, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner and concludes that the claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Law.

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Although there was voluminous testimony taken in this case (much of it irrelevant, in the Board's opinion) the issue really comes down to whether the claimant was insubordinate to her supervisor on May 26, 1989. This was the incident that directly resulted in the claimant's discharge. The Hearing Examiner concluded that the claimant was not insubordinate that day; the Board disagrees.

Even accepting the claimant's version of the incident, the Board finds that the claimant was insubordinate. Her supervisor came over and told her to go back to work. She did not make a move to return to her desk, but instead stated that she was being treated unfairly because others in the office were talking and were not being told to stop. This response was a refusal of a direct order by her supervisor.

The supervisor then "asked" the claimant to come to the private office of another supervisor, to continue their discussion; again the claimant refused. This too is a refusal of a supervisor's order. The Board finds totally ludicrous the argument that because the supervisor phrased the order politely, in the form of a question, as opposed to screaming a demand such as, "come into the office now," that the claimant was not obliged to obey her supervisor.

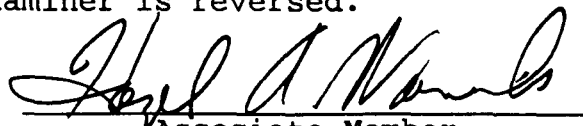
It was several minutes later, when the supervisor came back to the claimant and asked her again to come into the office, this time in an angry tone, that the claimant finally obeyed.

The Board has repeatedly held that an employee's refusal to obey an order of her supervisor is gross misconduct, connected with the work within the meaning of Section 6(b). See, e.g., Merritt v. Tri-State Oil Company, 1192-BH-83; see also, Peterson v. Browning-Ferris Industries, 252-SE-86. There is no requirement (nor should there be) that the order must be stated in a nasty tone in order for an employee's refusal to be considered insubordination, and gross misconduct under the Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning May 28, 1989 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1,910.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

H:K

kmb

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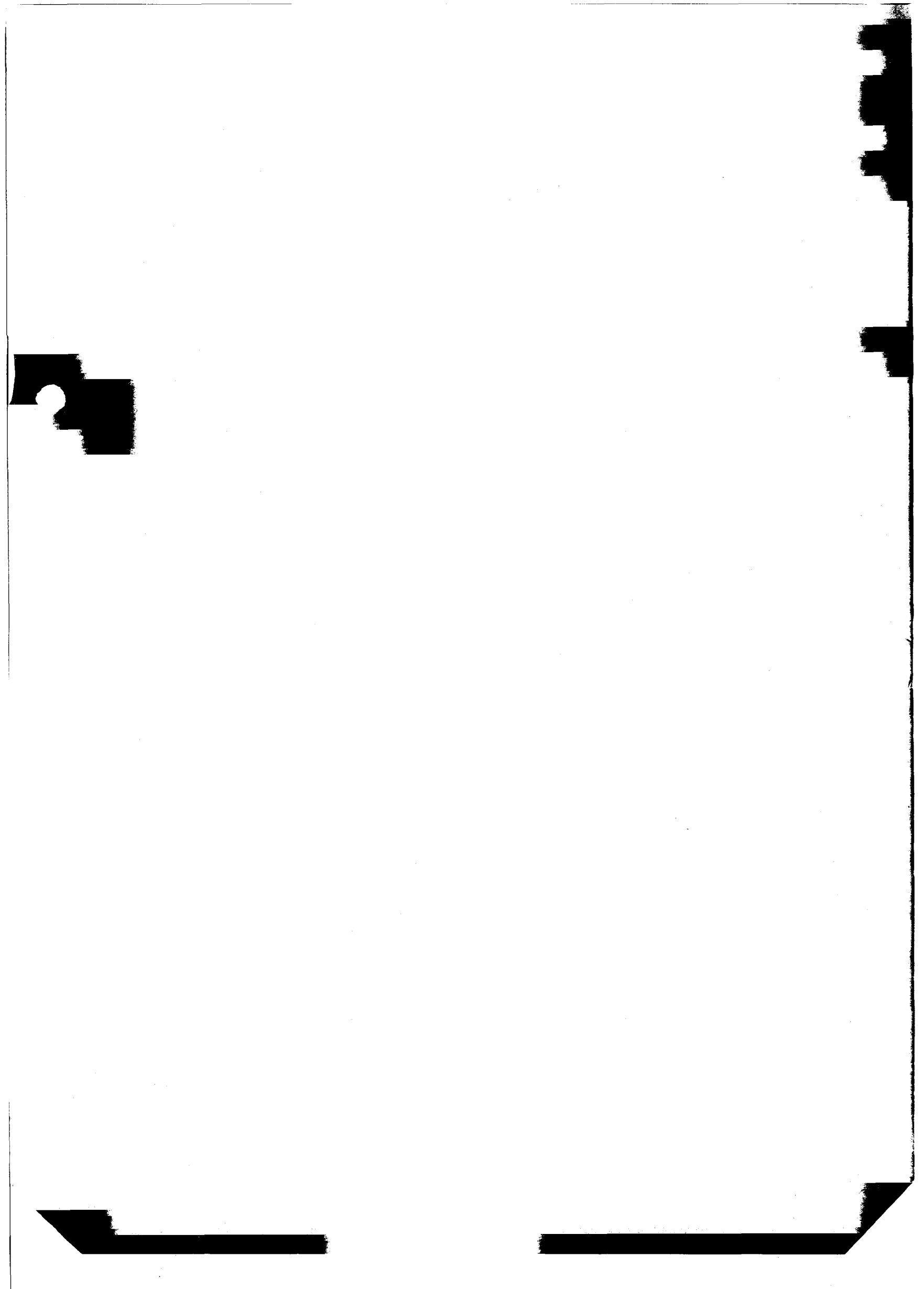
CLAIMANT

EMPLOYER

George A. Epstein, Esquire
100 E. Lexington Street
Baltimore, MD 21202

Steven D. Frenkel, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, MD 21201

UNEMPLOYMENT INSURANCE - NORTHWEST



VICKI L. JEFFERSON POINDEXTER

v.

ALEXANDER & ALEXANDER INC.

and

BOARD OF APPEALS
Department of Economic and
Employment Development

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* #90164037/CL115008
*

YD

* * * * *

ANSWER

NOV 15 1988
CIRCUIT
BALTIMORE

Alexander & Alexander Inc. by its undersigned counsel,
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, Alexander & Alexander Inc. prays that the
decision of the Board of Appeals be affirmed.

Respectfully submitted,

Steven D. Frenkil
Steven D. Frenkil
SEMMES, BOWEN & SEMMES
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for
Alexander & Alexander Inc.

14

VICKI L. JEFFERSON POINDEXTER

vs.

ALEXANDER & ALEXANDER, INC.

and

BOARD OF APPEALS
Department of Economic and
Employment Development

3
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* #90164037/CL115008
*
*

A N S W E R

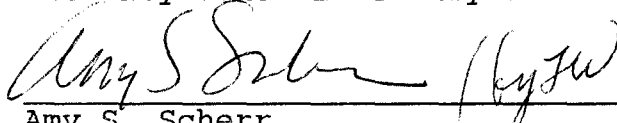
The Board of Appeals, Department of Economic and
Employment Development, in response to Appellant's Petition
states:

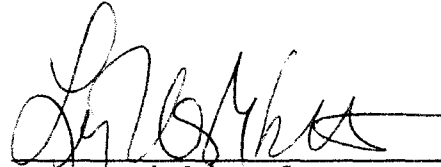
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there being no allegation of fraud, in accordance with Section
7(h), supra, such findings are conclusive.

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

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland


Amy S. Scherr
Assistant Attorney General

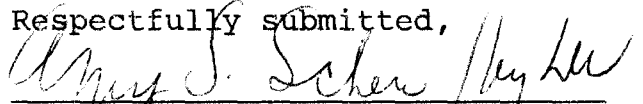


Lynn Weiskittel
Assistant Attorney General
217 East Redwood Street
11th Floor
Baltimore, Maryland 21202
Telephone: (301) 333-6943

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 Alexander & Alexander, Inc., c/o Steven D. Frenkil, Esq., Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, MD 21201.

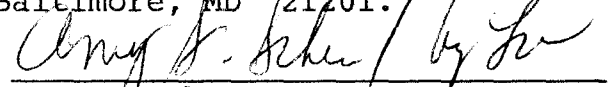
Respectfully submitted,



Amy S. Scherr
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 1990, I mailed a copy of the foregoing Answer to George A. Epstein, Esq., Attorney for Appellant, Rochlin & Settleman, P.A., 110 East Lexington Street, Baltimore, MD 21202 and to Steven D. Frenkil, Esq., Attorney for coAppellee-Employer, Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, MD 21201.



Amy S. Scherr

VICKI L. JEFFERSON POINDEXTER

Appellant

vs.

ALEXANDER and ALEXANDER, INC.

Employer

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No.: 90164037

FILED
JUN 22 1990
CIRCUIT COURT FOR
BALTIMORE CITY

* * * * *

PETITION FOR APPEAL

VICKI L. JEFFERSON POINDEXTER, Appellant, by GEORGE A. EPSTEIN and ROCHLIN & SETTLEMAN, P.A., her attorneys, pursuant to Maryland Rule B2(e), petitions the Court regarding the May 14, 1990 Decision of the Board of Appeals of the Maryland Department of Economic and Employment Development, and says:

1. Appellant appeals the Decision of the Board of Appeals of the Maryland Department of Economic and Employment Development in Decision No. 480-BR-90, Appeal No. 8908242. In that Decision, the Board of Appeals found that Appellant was discharged for gross misconduct within the meaning of Article 95A, Section 6(b) of the Annotated Code of Maryland, and ruled that she is disqualified from receiving benefits from the week beginning May 28, 1989 and until she becomes reemployed, earns at least 10 times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.


2. The Decision of the Board of Appeals is arbitrary and capricious in finding insubordination because this factual finding is unsupported by competent, material, and substantial evidence in view of the entire record. In reaching this Decision,

the Board therefore committed an error of law. The evidence before the Board showed, as determined by two different hearing examiners of the Department, that Appellant never disobeyed a direct order of a superior. Accordingly, Appellant was not discharged for gross misconduct under Article 95A, Section 6(b). Nor did Appellant commit misconduct under Article 95A, Section 6(c).

3. The Decision is against public policy.
4. The Decision substantially prejudices Appellant.
5. The Decision is erroneous for other reasons to be assigned at the hearing on this appeal.

WHEREFORE, Appellant respectfully requests that the Decision of the Board of Appeals be reversed and that no disqualification from receiving benefits be imposed upon Appellant.

ROCHLIN & SETTLEMAN, P.A.



GEORGE A. EPSTEIN
110 East Lexington Street
Baltimore, Maryland 21202
(301) 539-3070
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 22nd day of June, 1990, that a copy of the foregoing Petition for Appeal was mailed, postage pre-paid, to the Board of Appeals of the Maryland Department of Economic and Employment Development, 1100 North Eutaw Street, Baltimore, Maryland 21201; and to Steven D. Frenkil, Esquire, Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201, Attorney for Employer.



GEORGE A. EPSTEIN

FILED

JUN 18 1990

VICKI L. JEFFERSON POINDEXTER

Claimant

vs.

ALEXANDER and ALEXANDER, INC.

Employer

BEFORE THE

BOARD OF APPEALS
CIRCUIT COURT FOR BALTIMORE CITY

90164037

MARYLAND DEPARTMENT OF

OF ECONOMIC AND

EMPLOYMENT DEVELOPMENT

Decision No.: 480-BR-90

Appeal No.: 8908242

CL 115008

* * * * *

ORDER FOR APPEAL BY CLAIMANT

Madam Clerk:

Please enter an appeal on behalf of Vicki L. Jefferson Poindexter, Claimant, from the decision of the Board of Appeals of the Maryland Department of Economic and Employment Development, Decision No. 480-BR-90, dated May 14, 1990. This appeal is filed pursuant to Maryland Rule B2(a).

The undersigned certifies pursuant to Maryland Rule B2(c) that a copy of this Order was served pursuant to Maryland Rule 1-321 prior to the filing of this Order.

ROCHLIN & SETTLEMAN, P.A.

George A. Epstein

GEORGE A. EPSTEIN
110 East Lexington Street
Baltimore, Maryland 21202
(301) 539-3070
Attorneys for Claimant

ACW

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MSA SC 5458-82-150

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Dates: 1989-1994

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

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1989

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

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FAISON VS JEFFERSON Box 385 Case No. 89207040 [MSA T2691-3021, OR/11/3/47]

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MITCHELL VS PROVIDENT BANK Box 389 Case No. 89209043 [MSA T2691-3025, OR/11/3/51]

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ETHERIDGE VS KNIGHT Box 389 Case No. 89209044 [MSA T2691-3025, OR/11/3/51]

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2010/02/01 C Baker uploaded 1989 cases to msaref, emailed CW staff and returned to John/Dale. Note: 1990 to be complete ASAP

1990

DUMBELLS ASSCS,ETAL V CONSUMER PROTECTION Box 739 Case No. 90059044 [MSA T2691-3376, OR/11/12/24]

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WINTER,ETAL VS PIJANOWSKI,ETAL Box 783 Case No. 90081076 [MSA T2691-3420, OR/11/12/68]

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POINDEXTER VS ALEXANDER & ALEXANDER Box 927 Case No. 90164037 [MSA T2691-3564, OR/11/14/44]

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LEBSON MD VS BOARD OF MUNICIPAL Box 959 Case No. 90184037 [MSA T2691-3596, OR/11/14/76]

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HARRINGTON VS SECRETARY OF PUBLIC SAFETY Box 969 Case No. 90190075

[MSA T2691-3606, OR/11/15/2]

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Mayor AND City Council VS LOUDEN Box 1003 Case No. 90211027 [MSA T2691-3640, OR/11/15/36]

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System design by Dr. Edward C. Papenfuse and Nancy Bramucci.
Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy Bramucci.
Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Matt Davis.
Version 2.8.1