CASE NO. 012582008

Part ____ of ____ Parts

In The Circuit Court for Baltimore City

CIVIL

In the Matter of

EUGENE W. KLINES

VS.

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

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CASE NO. 91358008/CL142033 PAGE 2 of ____

DATE	DOCKET ENTRIES	NO.
6/9/92	Case submitted to the court for determination upon the aid of argument. Hollander J.	
6/9/92	Case held sub curia pending written memorandum. Hollander J.	
6/18/92	Pltff's Memorandum and Points of Authority filed.	7
7/2/92	Def's Memorandum in Support of the Board of Appeals filed.	8
8/17/92	Memorandum Opinion and Order filed affirming the decision of the Board of Appeals; judgment in favor of the Def's; Costs to be paid by Appellant. Hollander J.	"

CC-65 (1/83)

D.E

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA CASE NO. 91358008/CL142037 PAGE 1 of ____

PARTIES	ATTORNEY(S)
EUGENE W. KLINES	PROPER PERSON
V.	
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, STATE OF MARYLAND OAKLEY TRANSPORT	Amy S. Scherr - 509778 Lynn Zwiskittel - 911960

DATE	DOCKET ENTRIES	NO.
12-24-91	ORDER FOR APPEAL FROM THE DECISION OF THE BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT STATE OF MARYLAND, AND PETITION.	1
2/6/92	Appe. of Amy S. Scherr and Lynn Zwiskittel as attys for defts (Board of Appeals and Dpt. of Econ. and Employment Devel.) answer fd.	2
*2/6/92	Defts (Bd of Appeals and Dpt. of Econ and Employ. Devel.) motion for extension of time for filing the administrative record, statement of grounds and auth.	3
2-7-92	Order of Court that the Motion to Extend Time is "Granted". (Ross J.)	4
2-10-92	Transcript of Record fm the Dept of Economic Development fd 1 SET C.F.	5
2-13-92	Notice sent in accordance with Md Rule B12-	
3-30-92	left (Board of Appeals) Motion to Dismiss, Memo of Law & Statement of Facts & Authorities fd	6

CC-66 (1/83)

EUGENE W. KLINES		IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT	*	BALTIMORE CITY
and	*	
OAKLEY TRANSPORT	*	Case No. 91358008/CL42033
Appellees	*	

* * * * * * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

Eugene W. Klines ("Klines" or "Appellant") has appealed the decision of the Board of Appeals, Department of Economic and Employment Development ("Board" or "Appellee"), dated November 26, 1991. R.33-35.[1] The Board determined that Klines' conduct amounted to a "constructive voluntarily quit" because his employer, Oakley Transport ("Oakley"), had "no choice but to discharge him." R.34. The Board further determined that Klines' conduct was not attributable to "good cause" or "valid circumstances" within the meaning of Code, Labor and Employment Article, Section 8-1001.[2] R.35. The Board therefore held that Klines was ineligible for unemployment insurance benefits.

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1. "R" refers to the Record which has been sequentially numbered in this case.

2. Unless otherwise noted, all references to the Code are to the Labor and Employment Article.

II. Factual Summary

Klines was employed by Oakley as an interstate tractor trailer driver from July 31, 1991 to September 6, 1991. R.2,3,17. His Maryland license to drive was suspended as of August 30, 1991, for failure to pay fines incurred as a result of three speeding convictions he received in Florida, South Carolina and Virginia. R.14,15,18,34-35. Once Oakley became aware that Klines' license was suspended, he was terminated immediately. R.18,19. Klines asserted that he paid the fines by August 2, 1991, but that Maryland did not receive evidence of his payment. R.9,18,25. When he filed his claim for benefits, however, Klines acknowledged that he did not pay his tickets until two weeks after his discharge. R.2.

The Board found that Klines failed to pay timely the fines associated with his out-of-state traffic convictions. R.15. Because Klines lost his license as a result of his own conduct, he could no longer legally drive. The Board reasoned that a truck driver whose license is a paramount prerequisite to employment, and who, by his own neglect or want of action, causes his license to be suspended, is deemed to have constructively voluntarily quit such employment. R.34. The Board therefore denied Klines any unemployment insurance benefits. Klines now appeals from that decision.[3]

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3. The Board actually reversed the Hearing Examiner's decision of November 14, 1991. Although the Board agreed with the Hearing Examiner that Klines was ineligible for benefits, the Board differed with the Hearing Examiner's conclusion that Klines was discharged for gross misconduct under Section 8-1002. R.28-30.

III. Scope of Review

The scope of review of a decision of the Board is statutorily governed by Section 8-512(d), which provides in pertinent part:

> In a judicial proceeding [in regard to claims for benefits], findings of fact of the Board of Appeals are conclusive and the jurisdiction of the court is confined to questions of law if: (1) findings of fact are supported by evidence that is competent, material, and substantial in view of the entire record; and (2) there is no fraud.

See also, Board of Education of Montgomery County v. Paynter, 303 Md. 22 (1985); MEMCO v. Maryland Emp. Sec. Admin., 280 Md. 536 (1977); Bethlehem Steel Co. v. Board of Appeals, 219 Md. 146 (1959); Board of Appeals v. City of Baltimore, 72 Md. App. 427, 431-2 (1987); Adams v. Cambridge Wire Cloth Co., 68 Md. App. 666, 673 (1986).

Section 8-512(d), and 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). It is the province of the agency to resolve conflicting evidence, and "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). On review, this court may only determine "if, from the facts and permissible inferences in the record before the court, reasoning minds could reach the same result." Id.

Decisions of administrative agencies are prima facie correct. The agency's decision must be viewed in the light most favorable to the agency on appeal. Paynter, supra, 303 Md. at 35-36. 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." Id. (emphasis in original).

IV. Discussion

The Board's decision to deny Klines his claimed entitlement to unemployment insurance benefits is premised on Section 8-1001. It provides authority to deny unemployment insurance benefits to a claimant who resigns from available, viable employment without good cause or valid circumstances.

Section 8-1001 states as follows:

> (a) Grounds for disqualification. - An individual who is otherwise eligible to receive benefits is disqualified from receiving benefits if the Secretary finds the unemployment results from voluntarily leaving work without good cause.
>
> (b) Finding of good cause. - The Secretary may find that a cause for voluntary leaving is good cause only if:
>
> (1) the cause is directly attributable to, arising from, or connected with
>
> (i) the conditions of employment; or
>
> (ii) the actions of the employing unit; or
>
> (c) Valid Circumstances. - (1) A circumstance for voluntarily leaving work is valid only if it is:
>
> (i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or

(ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

As the language of Section 8-1001 indicates, it expressly addresses voluntary resignation from employment. In the case sub judice, which is based on Section 8-1001, the Board determined that Klines' conduct amounted to a constructive voluntary quit. Although Section 8-1001 does not expressly refer to a "constructive voluntary quit," the concept of "constructive voluntary quit" is discussed in Allen v. Core Target City Youth Programs,[4] 275 Md. 69 (1975). There the Court said:

> Notwithstanding the statutory chasm between leaving work voluntarily and discharge for misconduct, we can envision limited circumstances where, although the employee was shown to have been factually and technically discharged, it might be evident that he in fact undertook to terminate the employment relationship and thus be held to have "constructively" voluntarily left his employment. This is particularly true where an employee is shown to have abandoned his employment by pursuing a course of conduct which resulted in his severance from employment.

Id. at 81.[5]

This court concludes, based on the foregoing, that the concept of constructive voluntary quit is embodied within

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4. In Allen v. Core Target City, the Court actually found the doctrine of constructive voluntarily quit inapplicable to the particular facts of that case.

5. Numerous jurisdictions have adopted the concept of constructive voluntary quit or its equivalent. See, e.g., Echols v. Employment Security Commission, 30 Mich. 87, 155 N.W. 2d 824 (1986); Yardville Supply Company v. Board of Review, Dept. of Labor, 114 N.J. 371, 554 A.2d 1337 (1989); Jones v. Commonwealth Unemployment Compensation Board of Review, 513 Pa. 45, 518 A.2d 1150 (1986); Freeman v. District of Columbia Dept. of Employment Services, 568 A.2d 1091 (D.C. 1990).

Section 8-1001. The court agrees, further, that Klines abandoned his employment by engaging in a patterned conduct of neglect. He chose not to pay timely the out-of-state fines until after his license was formally suspended. Klines' own statement establishes such negligence, because only after learning of his termination from employment were the fines claimed to have been actually paid. R.2.

As Klines' conduct amounted to voluntary resignation from viable employment, Section 8-1001 provides that he is not entitled to benefits unless his conduct was based on good cause or valid circumstance. In Board of Education of Montgomery County v. Paynter, supra, 303 Md. 11 (1985), the Court interpreted Section 6(a) of Article 95A, the predecessor of Section 8-1001.[6] There the Court recognized two grounds for voluntarily leaving employment which will not result in disqualification of the employee from receipt of benefits. In order to qualify for benefits, the reasons for leaving employment must be supported either by good cause or valid circumstance.

To constitute good cause, the Court held it must be job related and it must be a cause "which would reasonably impel the average, able-bodied, qualified worker to give up his or her employment." Id. at 37 (citation omitted). In discussing the "valid circumstance" component of Section 6A, now codified at Section 8-1001(c)(1), the Court recognized the discretion vested with the Department of Economic and Employment

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6. Section 6(a) of Article 95A is identical in substance to Section 8-1001.

Development to determine what suffices for the finding of valid circumstance. What the Court said is instructive:

> That the legislature was relying on the expertise of the agency in this regard is clearly evident from the language of subsection (a), "[i]f the Executive Director finds that the individual's unemployment is due to his leaving work voluntarily without good cause," and "according to the seriousness of valid circumstances as determined in each case by the Executive Director....

Id. at 28. (Emphasis in original). The Board correctly found that there was no good cause or valid circumstance to excuse Klines' constructive voluntary quit.

In sum, the Board properly applied the relevant statutory provisions and case law to the facts as it reasonably found them to be. This court is not prepared to disturb the discretion that was properly exercised by the Board during the fact finding phase of the administrative proceeding. The factual determinations were supported by substantial evidence in the Record. Accordingly, Klines was lawfully denied receipt of benefits.

Based on the foregoing, it is this 17th day of August, 1992, by the Circuit Court for Baltimore City, ORDERED, that the decision of the Board be, and the same hereby is, AFFIRMED.

Costs to be paid by Appellant.

Ellen L. Hollander

Ellen L. Hollander, Judge

cc: Mr. Eugene W. Klines
Amy S. Scherr, Esquire
Assistant Attorney General

EUGENE W. KLINES,	*	IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
OAKLEY TRANSPORT	*	BALTIMORE CITY
and	*	#91358008/CL142033
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"), one of the Appellees herein, rendered an administrative decision on November 26, 1991, disqualifying Eugene W. Klines ("Klines"), Appellant, from receiving unemployment insurance benefits because he voluntarily left his employment with Oakley Transport ("Oakley"), an Appellee, without good cause within the meaning of §8-1001 of the Labor and Employment Article of the Annotated Code.[1]

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[1] Unless otherwise indicated, all statutory references are to Title 8 of the Labor and Employment Article of the Maryland Annotated Code.

Klines filed a timely appeal from the Board's decision to this court. This memorandum demonstrates that the factual findings made by the the Board are supported by competent, material and substantial evidence in the administrative record; that the Board made no errors of law in its imposition of the disqualification 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 §8-512. Findings of fact made by the Board are binding upon this court if there is substantial evidence in the record to support them. Section 8-512; 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); Board of Trustees of the Employee's Retirement System of the City of Baltimore v. Novik, 87 Md. App. 308, 589 A.2d 961 (1991). 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.

This Court must decide if there is substantial evidence to support the Board's findings. The determination of the credibility of witnesses' testimony is properly 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; Board of Trustees of the Employee's Retirement System, 87 Md. App. at ___, 589 A.2d at 978.

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 8-512(d); Paynter, 303 Md. at 35, 491 A.2d at 1192.

III. The Board's decision was correct as a matter of law.

A. Statement of Facts

Klines was employed by Oakley as an interstate tractor trailer driver for approximately two months from July 31, 1991, until September 6, 1991 (R.2,3,17).[2] Oakley terminated his employment when his license to drive was suspended as a result of nonpayment of outstanding fines in other states (R.17,18).

Specifically, Klines lost his license because he received speeding tickets in Florida, South Carolina and Virginia (R.18). In each state, he was ordered to pay a fine none of which apparently were paid on time, despite his testimony to the contrary (R.14,15).

Because the fines were not noted as paid, his license in Maryland was suspended and he could no longer drive (R.18). At that point, Oakley terminated his employment (R.18,19).

The Board found Klines was found guilty of speeding in three states (R.34,35). That speeding may have caused the suspension of his license was of some concern to his employer (R. 34). In any case, the Board found that Klines did not pay the fines involved in a timely manner and his license had already been suspended at least since the date of the Motor Vehicle Report of August 30, 1991 (R. 15).[3]

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

[3]The Hearing Examiner in this case based on the same facts
(Footnote Continued)

The Board has repeatedly ruled that a truck driver who loses his license through his own actions has constructively voluntarily quit employment (R. 34).

C. Klines was not entitled to unemployment insurance benefits because he constructively, voluntarily quit his employment with Oakley.

The Board's decision denying unemployment insurance benefits to Klines was made pursuant to §8-1001 which disqualifies claimants from receiving unemployment insurance benefits when they resign available, viable employment, unless the resignation was for a good cause or valid circumstance.

Section 8-1001 provides, in pertinent part:

> (a) Grounds for disqualification. - An individual who is otherwise eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that unemployment results from voluntarily leaving work without good cause.
>
> (b) Finding of good cause. - The Secretary may find that a cause for voluntarily leaving is good cause only if:
> (1) The cause is directly attributable to, arising from, or connected with
> (i) the conditions of employment; or
> (ii) the actions of the employing unit; or
>
> (c) Valid circumstances. - (1) A circumstance for voluntarily leaving work is valid only if it is:
> (i) a substantial cause that is directly attributable to, arising

(Footnote Continued)
found that Klines was discharged under a different provision, gross misconduct, §8-1002 (R. 29). The disqualification imposed under both statutory sections were identical.

> from, or connected with connected with conditions of employment or actions of the employing unit; or
>
> (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

The Court of Appeals extensively reviewed §8-1001[4] in Board of Education of Montgomery County v. Paynter, 303 Md. 11, 491 A.2d 1168 (1985). The Court held that §8-1001 contains two categories of non-disqualifying reasons for voluntarily leaving employment. Good cause must be job related and it must be a cause "which would reasonably impel the average, able-bodied, qualified worker to give up his or her employment." 303 Md. at 37, 491 A.2d at 1193. Quoting Uniweld Products, Inc. b. Industrial Relations Commission, 277 S.2d 827, 829 (Fla. App. 1973).

The second category of non-disqualifying reason is the valid circumstance. Section 8-1001(c)(1). There are two types of valid circumstance. A valid circumstance may be a substantial cause that is job related. Section 8-1001(c)(1)(i). Additionally, a reason may be non-job-related but necessitous or compelling. Section 8-1001(c)(1)(ii). Paynter, 303 Md. at 30, 491 A.2d at 1190.

In Paynter, the Court stated that the Legislature was unambiguous in vesting the Department of Economic and

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[4]The court's analysis was of the former §6(a) of Article 95A of the Maryland Annotated Code. The recodification did not create any substantive change in the law.

Employment Development with the discretion to determine what constituted good cause or valid circumstance under §8-1001.

> That the Legislature was relying on the expertise of the agency in this regard is clearly evident from the language of subsection (a) "[i]f the Executive Director finds that the individual's unemployment is due to his leaving work voluntarily without good cause," and "according to the seriousness of valid circumstances as determined in each case by the Executive Director. . . " 303 Md. at 28, 491 A.2d at 1189. (emphasis the original)

In this case, the Board made the specific finding that Klines' failure to timely pay his pending fines in several states resulted in the suspension of his Maryland license. His failure to maintain a valid license constituted a constructive, voluntary leaving of his employment.

In Allen v. Core Target City, supra., the Maryland Court of Appeals rejected the application of the constructive voluntary quit doctrine where a teacher refused to teach a class, as required by her specific job duties, but left the door open as to its application in another case.

The Court stated:

> "Notwithstanding the statutory chasm between leaving work voluntarily and discharge for misconduct, we can envision limited circumstances where, although the employee was shown to have been factually and technically discharged, it might be evident that he in fact undertook to terminate the employment relationship and thus be held to have "constructively" voluntarily left his employment. This is particularly true where an employee is shown to have abandoned his employment by pursuing a course of conduct which

resulted in his severance from employment." 338 A.2d at 244.

Since the Court of Appeals' decision in Allen, Maryland courts have been silent on this issue.

In 1984, the Board, decided in light of Allen, supra, that the failure of a truck driver to maintain a valid license, which is clearly a condition of his employment, leaving an employer absolutely no choice but to terminate his services is a "limited circumstance" envisioned by the Court of Appeals where the imposition of a constructive voluntary quit disqualification is appropriate.[5] In support of its determination in Queen, the Board also cited a Michigan decision, cited by the Court of Appeals in Allen: Echols v. Employment Security Commission, 30 Mich. 87, 155 N.W. 2d 824 (1986), where a cab driver had his motor vehicle's license revoked through no fault of the employer, and that leaving was held to be a voluntary quit.

Without employing the term "constructive voluntary quit", courts in other jurisdictions have found under similar statutory language, a truck driver who lost his job when his driver's license was suspended following conviction of a non-job-related charge of driving when intoxicated,

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[5]See Board's decision, attached, Queen v. Maryland Lumber Company, 910-BR-84, November 21, 1984. The Board realizes this Court is not bound by its decision, but the Court of Appeals has acknowledged its expertise in issues pertaining to unemployment. See, Barley v. Maryland Department of Employment Security, 242 Md. 102, 218 A.2d 24 (1966)

constituted leaving work voluntarily. See, Yardville Supply Company v. Board of Review, Department of Labor, 114 N.J. 371, 554 A.2d 1337 (1989). There, the Supreme Court of New Jersey stated:

> "Where it is reasonably foreseeable that an employee's voluntary conduct will render him unemployable, and his actions actually do lead to the loss of a prerequisite of employment, the employee leaves work voluntarily without cause attributable to such work." 554 A.2d at 1340.[6]

The Supreme Court of Pennsylvania came to the same conclusion where a teacher was dismissed for her failure to complete enough credits to obtain a required teacher certificate. Jones v. Commonwealth Unemployment Compensation Board of Review, 513 Pa. 45, 518 A.2d 1150 (1986).

Without even reaching the specific provisions of Pennsylvania's voluntary quit statute, the Court concluded the policy section of its operative legislation (which is identical to Maryland's) providing the the unemployment system provide security against unemployment and employees during period when they become unemployed "through no fault of their own", independently serves to disqualify

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[6]The applicable New Jersey statute, N.J.S.A. 43:21-5(a) contains provisions similar to Maryland §8-1001: providing that an individual shall be disqualified from receiving benefits" "(a) for the week in which the individual has left work voluntarily without good cause attributable to such work . . . ".

individuals where voluntary actions interfere with their ability to do their work. 517 A.2d at 1153.[7]

The District of Columbia Court of Appeals, found in Freeman v. District of Columbia Department of Employment Services, 568 A.2d 1091 (D.C., 1990), that an individual who changed her status from full-time banquet server to on-call banquet server, voluntarily quit her employment because she failed to take all necessary and reasonable steps to preserve her work. In that case, there was no on-call work, a fact which Freeman knew prior to her change in status.

In this case, the Board determined that Klines' failure to timely pay the pending fines which mandated the suspension of his driver's license constituted what could best be described as a constructive voluntary leaving.

Klines knew, at all relevant times, that it was his responsibility to maintain a valid driver's license in order to drive his truck. This is precisely what he did not do. He is, therefore, not an individual who is unemployed through no fault of his own. Section 8-102(c)

The Board's decision that is supported by both the facts of this case and the more recent analyses of the concept of constructive voluntary leaving in other states with statutes similar to Maryland's. The Court of Appeals in Allen, supra, specifically left the door open as to the

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[7]For Maryland's provision, see §8-102(c).

applicability of the constructive voluntary quit in imposing the disqualification under Maryland's unemployment insurance law. This case is an example of a proper application of that concept, and the Board's determination should be upheld.

IV. Conclusion

Based upon the aforegoing and the record as a whole, the Board's decision is correct as a matter of law and should be affirmed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

AMY S. SCHERR
Assistant Attorney General
217 E. Redwood Street
Room 1101
Baltimore, Maryland 21202
(410) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 1992, a copy of the aforegoing Memorandum in Support of the Board of Appeals was mailed, postage prepaid, to Eugene W. Klines, 3716 Boarman Avenue, Baltimore, Maryland 21215 and to Oakley Transport, P.O. Box 4170, Lake Wales, Florida 33859-9980.

AMY S. SCHERR

DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

Ga/ no valid circumstance - truck driver had license limited suspended - did not meet condition of employment & discharged.

Constructively, voluntarily quit.

— DECISION —

Decision No.:	910-BR-84
Date:	November 21, 1984
Claimant: Franklin Queen 2013 E. Eager St. Baltimore, Maryland 21205	
Appeal No.:	03202
S. S. No.:	214-58-7295
Employer: Maryland Lumber Co. 2600 W. Franklin St. Baltimore, Maryland 21223	
L.O. No.:	1
Appellant:	CLAIMANT

Issue: Whether the Claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of § 6(a) of the Law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON December 21, 1984

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals affirms the decision of the Appeals Referee.

The claimant was employed as a truck driver. Obviously, his having a valid license to drive a truck was a legal prerequisite for the job, over which the employer had no control.

On January 6, 1984 the employer learned that the claimant's license had been suspended since October 6, 1983, due to his driving record. The claimant admitted that the employer had no choice but to lay him off. The claimant was told that if and when his license was restored by the Department of Motor Vehicles, he could return to his job.

The claimant failed to abide by a condition of his employment, the absence of which left the employer absolutely no choice but to terminate the claimant's services. This is clearly one of those "limited circumstance" envisioned by the Court of Appeals, where a claimant is held to have "constructively" voluntarily quit his employment. See, Allen v. Core Target City Youth Project, 275 Md. 69, 338 A2 237 at 244 (1975); see also, Glen Steele v. Regional Planning Council, Bd. Dec. No. 901-BR-84. In Allen the Court of Appeals cited as an example of such a circumstance the Michigan case Echols v. Employment Security Commission, 380 Mich. 87, 155 N.W. 2d. 824 (1968), a case factually very similar to this case:

> ...the claimant, a cab driver, had his motor vehicle operator's license - a prerequisite to his continued employment - revoked through no fault of his employer, but as a result of his own negligence, and it was held on such facts that he voluntarily left his employment.
> Allen v. Core Target City Youth Project, supra at 244.

Thus, applying the reasoning of the Allen and Echols cases here, it is clear that the claimant voluntarily quit his job, within the meaning of § 6(a) of the Law. Since there is no evidence that the reasons for the claimant's quit constitute either good cause or valid circumstances, the maximum penalty is warranted.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of § 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning January 1, 1984 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1,120) and thereafter becomes unemployed through no fault of his own.

FILED

JUN 18 1992

CIRCUIT COURT FOR
BALTIMORE CITY

Memorandum

#91358058
CL142033
Eugene William Kline

Issues

1. I am a truck driver
2. I received several traffic citations while driving outside of Maryland.
3. These citations were received in Florida, Virginia and South Carolina.
4. These states were all paid by August 2,1991
5. The Maryland Department of Transportation did not receive evidence of payment, and therefore suspended my Maryland driving privilege on August 30,1991.
6. I have made numerous attempts to secure proof of payment.
7. My employer discharged me pending reinstatement of my driving license
8. Unemployment benefits were denied to me.

Points Of Authority

1. 8-1001 Constructive Voluntary Quit -- occurs when an employer takes an action which results in the employer having no choice but to discharge the employer.
2. 8-1002 (2)(1)(i) - provides for unemployment benefits to be denied if the employee's discharge was the result of deliberate and willful disregard for standards.

Argument

1. Admittedly I received several traffic violations, however I did pay each of the states where tickets were received. Although these tickets were not paid time, they were paid prior to August 30,1991 when my Maryland license was suspended.
2. I have diligently attempted to secure proof of payment to prove to the Maryland MVA that I should not have my Maryland license suspended.
3. 8-1001 says a constructive voluntary quit occurs when the employee "takes an action" which gives the employer no choice but to discharge. I took no action that caused my termination. I did in fact take every opportunity to avoid termination both by paying my tickets and by notifying the Maryland MVA that I had paid.
4. 8-1002 (2)(1)(i) indicates that unemployment benefits will be denied if discharge was the result of the employee's willful disregard for standards. At no time did I willfully disregard any standard that was within my control. While I received traffic violations, I never ignored them, nor attempted to avoid payment or responsibility

I in fact paid for all violations and tried to insure that Maryland was notified.

Conclusion I believe that the suspension of my driving privilege which resulted in my discharge was caused by the states of Florida, Virginia and South Carolina failing to notify Maryland on a timely basis of my payment.

While I attempted to provide proof of payment and to encourage Florida, Virginia and South Carolina to notify Maryland, I have not been successful to date. I have made four to five calls and sent two to three letters to resolve this issue, but I am still not able to resolve this matter.

Since I cannot control the state to state notification , I believe that the discharge from my employment was not within my control, and therefore my discharge was neither willful nor deliberate and therefore I am entitled to my unemployment benefits.

I hereby Certify that on this 18. 1992 that I sent a copy of my Memorandum to Cathy Thompson and Amy L. Likens -

Eugene W Klein

CIRCUIT COURT FOR BALTIMORE CITY DAT

PRESIDING JUDGE ..... Hollander

COURTROOM CLERK ..... Lotz

STENOGRAPHER ..... Kay

ASSIGNMENT FOR TUESDAY JUNE 09, 1992

CASE NUMBER - 91358008
CASE TITLE - KLINERS VS BD. OF APPEALS DEPART.OF ECON.CL142033 CL
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - COURT TRIAL - FAST TRACK

*OAKLEY TRANSPORT	DEFENDANT	
SCHERR, AMY	DEFENSE ATTORNEY	333-694
WEISKITTEL, LYNN	DEFENSE ATTORNEY	333-694
KLINES, EUGENE W	PLAINTIFF	

Pending written Memorandum

TYPE OF PROCEEDING: (____ JURY) (__✓__ NON-JURY) (____ OTHER)

DISPOSITION (CHECK ONE)

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

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

(____ JUDGEMENT NISI) (____ ORDER/DECREE SIGNED) (____ OTHER)
PLEASE EXPLAIN:

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

(____ POSTPONED) (____ MOTION GRANTED)

(__✓__ SUB CURIA) (____ MOTION DENIED)

JUDGE SIGNATURE _____ DATE _____

EUGENE W. KLINES	*	IN THE
v.	*	CIRCUIT COURT
OAKLEY TRANSPORT	*	FOR
	*	BALTIMORE CITY
and	*	#91358008/CL142033
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT	*	

* * * * *

MOTION TO DISMISS

The Board of Appeals, Department of Economic and Employment Development, an Appellee, moves that the above-captioned appeal be dismissed. The grounds of this Motion are as follows:

1. The right of appeal from a decision of the Board of Appeals, Department of Economic and Employment Development, is governed by Subtitle B of the Maryland Rules of Procedure.

2. Rule B12 provides that within thirty days after being notified by the Clerk of the Court in which the administrative record is filed in an appeal arising under the B Rules, the Appellant shall file a Memorandum setting forth a concise statement of all issues raised on appeal as well as argument on each issue, including citations of legal authority and references to pages of the transcript and exhibits relied upon.

3. The administrative record in this case was filed with the Clerk of the Court on February 13, 1992 and on February 14, 1992 all parties were notified that the record

3

had been filed.

4. A copy of the record was mailed to Appellant on February 7, 1992. The record was accompanied by a letter from Counsel for the Board of Appeals that notified Appellant of the requirements of Rule B12 (attached hereto and made a part hereof as Exhibit I). In her letter, Counsel for the Board informed Appellant that a Motion to Dismiss would be filed if Appellant fails to file the required Memorandum.

5. To date, Appellant has not filed the required Memorandum with this Court.

WHEREFORE, the Board of Appeals moves that the above-captioned appeal be dismissed for failure to file a Memorandum pursuant to Rule B12.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

AMY S. SCHERR
Assistant Attorney General
Room 1101
217 E. Redwood Street
Baltimore, Maryland 21202
(410) 333-4813

AFFIDAVIT

I HEREBY AFFIRM, under penalty of perjury, that the aforegoing is true to the best of my knowledge, information and belief.

AMY S. SCHERR

Exhibit I

J. JOSEPH CURRAN, JR.
Attorney General
RALPH S. TYLER, III
Deputy Attorney General
NORMAN E. PARKER, JR.
Assistant Attorney General
Counsel to the Department
LAILA K. ATALLAH
Assistant Attorney General
Deputy Counsel to the Department

OFFICES OF
THE ATTORNEY GENERAL

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Assistant Attorneys General
(410) 333-4813
Fax: (410) 333-8298

STATE OF MARYLAND
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
217 EAST REDWOOD STREET – ROOM 1101
BALTIMORE, MARYLAND 21202

February 7, 1992

Eugene W. Klines
c/o Project Placement
201 East North Avenue
Baltimore, MD 21202

Re: #91358008/CL142033

Dear Mr. Klines:

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 /LA

Amy S. Scherr
Assistant Attorney General

AS:amb
Enclosures

cc: Saundra E. Banks, Clerk

P.S. - Clerk: Please file the attached copy of the Administrative Record.

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.)

EUGENE W. KLINES	*	IN THE
v.	*	CIRCUIT COURT
OAKLEY TRANSPORT	*	FOR
	*	BALTIMORE CITY
and	*	#91358008/CL142033
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT	*	

* * * * *

STATEMENT OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO COMPLY WITH RULE B12

Within 30 days after being notified by the Clerk of the filing of the record, the Appellant must file a Memorandum setting forth a concise statement of the issues and arguments raised on appeal, as well as legal citations and references to the transcript and exhibits.

Although there are no specific sanctions mandating dismissal under Rule B12, Maryland courts have consistently held that the Maryland Rules of Procedure are ". . . not to be considered as mere guidelines or Heloise's helpful hints to the practice of law but rather precise rubics that are to be read and followed. . ." Colonial Carpet v. Carpet Fair, 36 Md. App. 583, 374 A.2d 419, 421 (1977); also See, Weston International v. Woodlawn Supermarkets, 44 Md. App. 390, 408 A.2d 781 (1979) and Pride Mark Realty, Inc. v. Mullins, 30 Md. App. 497, 352 A.2d 866 (1976).

Rule B12 specifically requires the filing of a Memorandum with identified criteria and time limits. The

Court of Appeals stated in Gaetano v. Calvert County, 310 Md. 121, 527 A.2d 46 (1987), the purpose of this rule is:

> . . .to inform the opposing parties in the trial court of the issues involved in the case and the appellant's arguments on appeal, in sufficient time for the opposition to respond in kind and for the court to make an informed decision.

Appellant failed to file a Memorandum in accordance with Rule B12 and has not contacted this Court for an appropriate extension of time for filing. In Gaetano, supra., the Court of Appeals stated that the trial court needs to assess the consequences of an Appellant's non-compliance before dismissing an administrative appeal. The Appellant's failure to file a memorandum leaves the Board in the untenable position of having no opportunity to know and respond to the Appellant's contentions on appeal, prior to hearing. Also, this Court is placed in the position of having to decide this administrative appeal without benefit of prehearing briefs, which any court acting in an appellate capacity might expect.

Under similar circumstances, the Court of Special Appeals has sanctioned dismissal for failure to comply with Rule B7. In Jacober v. High Hill Realty, Inc., 22 Md. App. 115, 321 A.2d 838 (1974), although there was no specific sanction enumerated regarding failure to transmit the administrative record as required by Rule B7, the Court of Special Appeals dismissed the appeal because of Appellant's failure to comply.

Failure to comply with rules of procedure generally results in dismissal. See, Federal Bank of Baltimore v. Esham, 33 Md. App. 446, 406 A.2d 928 (1979). Dismissal of this appeal is both consistent with prior judicial interpretations of the rules and is a logical extension of those decisions.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

AMY S. SCHERR
Assistant Attorney General
217 E. Redwood Street,
Room 1101
Baltimore, Maryland 21202
(410) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 1992, a copy of the aforegoing Motion to Dismiss, Affidavit and Statement of Grounds and Authorities in Support thereof was mailed, postage prepaid to Eugene W. Klines, c/o Project Placement, 302 E. North Avenue, Baltimore, Maryland 21202.

AMY S. SCHERR

EUGENE W. KLINES	*	IN THE
	*	CIRCUIT COURT
v.		
	*	FOR
OAKLEY TRANSPORT		
	*	BALTIMORE CITY
and	*	#91358008/CL142033
BOARD OF APPEALS, DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT	*	

* * * * *

ORDER OF COURT

No cause to the contrary having been shown, it is this ____ day of _____, 1992 by the Circuit Court for Baltimore City ORDERED:

1. That the aforegoing Motion to Dismiss be, and the same is hereby granted for failure to file a Memorandum on appeal as required by Rule B12, and

2. That all court costs be waived.

_____

JUDGE

Eugene W. Klines
c/o Project Placement
201 East North Avenue
BAlto.Md. 21202

Lynn Weiskittel
217 East Redwood Street
11th Floor
BAlto.Md.21202

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Eugene W. Klines

vs.

Board Of Appeals, Etal

Docket:

Folio:

File: 91358008/CL142033

Date of Notice: 2/14/92

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 13th day of Feb., Nineteen Hundred and ninety-two, I received from the Administrative Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Eugene W. KLines

vs.

Board Of Appeals, Etal

Docket:

Folio:

File: 91358008/CL142033

Date of Notice: 2/14/92

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SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

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Attorney General
RALPH S. TYLER, III
Deputy Attorney General
NORMAN E. PARKER, JR.
Assistant Attorney General
Counsel to the Department
LAILA K. ATALLAH
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STATE OF MARYLAND
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
217 EAST REDWOOD STREET – ROOM 1101
BALTIMORE, MARYLAND 21202

February 7, 1992

FILED
FEB 10 1992
CIRCUIT COURT FOR
BALTIMORE CITY

Eugene W. Klines
c/o Project Placement
201 East North Avenue
Baltimore, MD 21202

Re: #91358008/CL142033

Dear Mr. Klines:

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 /dla

Amy S. Scherr
Assistant Attorney General

AS:amb
Enclosures

cc: Saundra E. Banks, Clerk

P.S. - Clerk: Please file the attached copy of the Administrative Record.

AN EQUAL OPPORTUNITY EMPLOYER

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.)

EUGENE W. KLINES	:	IN THE
vs.	:	CIRCUIT COURT
OAKLEY TRANSPORT	:	FOR
and	:	BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	:	#91358008/CL142033

RECORD BEFORE THE

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

J. JOSEPH CURRAN, JR.
Attorney General
RALPH S. TYLER, III
Deputy Attorney General
NORMAN E. PARKER, JR.
Assistant Attorney General
Counsel to the Department
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STATE OF MARYLAND
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
217 EAST REDWOOD STREET – ROOM 1101
BALTIMORE, MARYLAND 21202

EUGENE W. KLINES	:	RECORD BEFORE THE
vs.	:	DEPARTMENT OF
OAKLEY TRANSPORT	:	ECONOMIC AND EMPLOYMENT
and	:	DEVELOPMENT
BOARD OF APPEALS Department of Economic and Employment Development	:	APPEAL NO. 91-CWC-539

THIS IS TO CERTIFY that, to the best of my knowledge, the following is a true copy of documents and papers, and transcript of testimony taken in the matter, together with findings of fact and decisions therein, this 6th day of February, 1992.

STATE OF MARYLAND
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT

BY: Lynn M. Weiskittel /LA
Lynn M. Weiskittel
Assistant Attorney General
Attorney for Appellee,
Board of Appeals

TABLE OF CONTENTS

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

CLAIMANT'S APPOINTMENT NOTICE

NOTICE TO CLAIMANT: Please appear at the scheduled time, and bring this form with you to the interview. Even if you are not receiving benefits or have been disqualified, you must still report for this interview.

SOCIAL SECURITY NUMBER: 124-36-2251

This interview may result in a termination of your unemployment insurance benefits and may result in a finding that you are overpaid. It is your responsibility to continue to file bi-weekly claims if you are still unemployed. No backdated claims will be accepted.

ISS | TO BE RESOLVED: DISCHARGED FROM EMPLOYMENT
EMPLOYER: WILLIAMS TRANSPORT

If you cannot appear for the interview, return this notice and notify this office in writing immediately. Indicate the reason you are unable to report and provide any information on the ISSUE TO BE RESOLVED that should be considered in making a determination.

CLAIMANT & EMPLOYER:

THE REVERSE SIDE OF THIS NOTICE CONTAINS IMPORTANT INFORMATION.
PLEASE BE SURE TO READ IT CAREFULLY.

DEED/OUI SR6 (REVISED 1/91) (MABS) SIDE 1

REPORT TO LOCAL OFFICE

DEED/UNEMPLOYMENT INSURANCE ADMIN.
NORTHWEST LOCAL OFFICE
4025 MORTIMER AVENUE
BALTIMORE, MD 21215

INTERVIEW DATE: TUESDAY OCTOBER 15, 1991

INTERVIEW TIME: 9:20 AM 01

WILLIAMS TRANSPORT
ROUTE 15 NORTH
BISHOPVILLE SC 29150

EUGENE W KLINE
3612 WOODBINE AVENUE
BALTIMORE MD 21207

NOTICE TO EMPLOYER: This interview may affect your earned-rate or reimbursable account. Please be available by telephone at the scheduled time. If you are unable to be available by telephone, return this notice and notify this office in writing immediately. Provide any information on the ISSUE TO BE RESOLVED that should be considered in making a determination.

NOTICE TO CLAIMANT AND EMPLOYER: This interview will not be postponed. Each party has the right to provide representatives and/or witnesses, who may present information that is relevant and known directly to them. Written records and pertinent written statements by persons having knowledge of facts relating to the case may be submitted. Each party will be given an opportunity at the interview to present and rebut evidence regarding the ISSUE TO BE RESOLVED and to cross examine anyone providing evidence. No evidence will be considered in the decision unless it was made available to the parties and the parties were given the opportunity to rebut it. Either party will lose the right to respond to information received from other parties by failing to appear or be available. At the interview, the claims examiner shall inquire into and consider all issues that are included in the ISSUE TO BE RESOLVED section of this notice, and any issue that develops after the notice is sent or during the interview if neither party objects. A decision will be made on the claimant's eligibility for benefits, regardless of any party's failure to participate in the interview.

If you are unable to report or be available for this interview, write the requested information in the area provided. If the space provided is insufficient, attach any additional written information to this notice. Mail the notice and any attachments to the Local Office at the address shown on the front of the notice so that it is received prior to the date of the interview.

Signature

Date

STATE OF MARYLAND
DEPARTME[illegible] OF ECONOMIC AND EMPLOYMENT D[illegible]OPMENT
OFFICE OF UNEMPLOYMENT INSURANCE

FACT FINDING REPORT

Date Conducted 10-15-91
Claimant's Name Eugene Kline
Social Security Number 12436 225 1
Issue: Discharge or Suspension From Work

[X] Unresolved Issue (HO2)
[ ] Create and Resolve Issue (HO3)
[ ] Redetermination/Corrected Determination (HO5)

CLAIMANT'S STATEMENT

Claimant present? YES [X] NO [ ] If no, how contacted?
Name of employer Oakley Transport Name of immediate supervisor Ed - dispatch
FDW: 7-91 LDW: 9-6-91 Rate of Pay: 22 per [illegible] Type of Work: TRTR driver
Name and title of person who notified you of your discharge Carl Safety
What reason were you given for your discharge? License was suspended

Did you agree with this reason? YES [X] NO [ ] If no, explain: I had paid my tickets two weeks after I was discharged. I had re-contacted Oakley transport for work, but their waiting

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 [X] How many? Date of most recent warning:
suspensions from work? YES [ ] NO [X] How many? Date of most recent suspension:
Did you protest your discharge? YES [ ] NO [ ]
Additional information: for my drivers record to clear. I'm currently waiting for my receipts of payment so I can take them to Dept of Motor Vehicle here in Maryland. I had unpaid tickets in South Carolina, Florida and Pennsylvania.

Are you able, available and actively seeking full-time work? YES [X] NO [ ] If no, explain:

CLAIMANT'S REBUTTAL: N/A

I have read and hereby affirm under penalties of perjury that the aforegoing information is true and correct to the best of my knowledge, information and belief.

Claimant's Signature: Eugene W Kline

2

DEED/OUI 221 (6BC) (Revised 11-89) (Side 1)

FACT FINDING REPORT

EMPLOYER'S STATEMENT

Name of employer/company: Oakley Transport — Employer present? YES ☐ NO ☒

Separation notice received: Yes — 207A ☒ Employer letter ☐ Other ☐

LDW: 9/9/91 — Reason for separation from above: discharged - license was suspended in three States for Classification over road driver - therefore disqualified

Employer contacted by phone? YES ☒ NO ☐ Telephone Number: 1-800-633-9375

Name of company officer: Gene Butler — Position/title: Safety Control

Claimant present when telephone information was received? YES ☒ NO ☐

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

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

warned verbally? YES ☐ NO ☐ How many times? ____ Dates of warnings: ____

warned in writing? YES ☐ NO ☐ How many times? ____ Dates of warnings: ____

suspended from work? YES ☐ NO ☐ How many times? ____ Dates of suspensions: ____

Additional information: Claimant was informed his drivers license has to be totally cleared before he will possibly be reinstated with the company

If the reason for discharge was absenteeism or lateness:

Number of days absent: ____ Dates: ____

Number of days late: ____ Dates: ____

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

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

Were the absences/lateness authorized? YES ☐ NO ☐

ADDITIONAL INFORMATION

Employers rate $5.10 ppd to add Oakley Transport wkd 7-31-91 to 9-6-91

ovt 10/69,

BENEFIT DETERMINATION

SSN 124 36 2251 C Name Check E KLi

Sequence Number: 08 Issue Code 50 Program: 08 Java:

Resolution Code: 50 Penalty? 4 Count? 4 Time Lapse:

Statement Number: 0587 Text Date 09/06/91 Examiner ID: KSJ38

Employer Number: 999999983 Non-Charge? 1 Non-Charge Start Date: 09/22/91

Start Date: 09/01/91 Disq. Weeks: 8 OP Source: OP Fault:

Redet/Corr. Det. Reason:

2C

Date Completed 10/15/91 Claims Examiner: Jones

DEED/OUI 221 (6BC) (Revised 11-89) (Side 2)

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT — REQUEST FOR SEPARATION INFORMATION — EMPLOYER'S COPY

OFFICE OF UNEMPLOYMENT INSURANCE
STATE OF MARYLAND P.O. BOX 17153 BALTIMORE, MARYLAND 21203

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.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT — REQUEST FOR SEPARATION INFORMATION — RETURN TO LOCAL OFFICE

SOCIAL SECURITY NO.	EMPLOYEE'S INITIALS AND LAST NAME	OTHER LAST NAME	EMPLOYER ACCOUNT NO.	EFFECTIVE DATE OF CLAIM	RUN DATE	DUE DATE
124-36-2251	E W KLINE		00001201	09/22/91	09/23/91	10/01/91

REASON FOR SEPARATION

- ☐ 1. LAYOFF (10 WEEKS OR LESS) (97) EXPECTED DATE OF RETURN
- ☐ 2. LACK OF WORK (99)
- ☐ 3. QUIT (30)
- ☒ 4. DISCHARGED (50)
- ☐ 5. VACATION SHUT DOWN (28) START DATE ____ END DATE ____
- ☐ 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 ___
- ☐ 7. LABOR DISPUTE (29)
- ☐ 8. STILL EMPLOYED ON A CONTINUOUS PART TIME BASIS
- ☐ 9. OTHER

CLAIMANT'S FIRST DAY OF WORK: MO. 7 DAY 31 YR. 91
CLAIMANT'S LAST DAY OF WORK: MO. 9 DAY 6 YR. 91

☐ APPLICABLE TO WAGE TRANSFER
YOUR FORMER EMPLOYER 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 your former employee, you may be requested to attend a Pre-determination 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.

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 ...ON, OR ANY OTHER RETIREMENT PAYMENT?
PER MONTH $ ____ EFFECTIVE DATE ____
LUMP SUM $ ____ DATE PAID ____
DID THE CLAIMANT CONTRIBUTE ☐ YES ☐ NO

2. PROFIT SHARING AMT. $ ____ DATE PAID ____
3. BONUS OR SPECIAL PAYMENT $ ____ DATE PAID ____
4. SEVERANCE PAY $ ____ DATE PAID ____
5. VACATION PAY $ ____ DATE PAID ____
6. HOLIDAY PAY $ ____ DATE PAID ____

CLAIMANT'S WEEKLY WAGE $ ____ CLAIMANT'S HOURLY RATE $ ____

TRADE NAME OF EMPLOYER
c

DID THE CLAIMANT WORK ALL AVAILABLE HOURS DURING THE CALENDAR WEEK WHICH INCLUDES THE LAST DAY OF WORK? ☒ YES ☐ NO IF NO, EXPLAIN:

ENTER THE AMOUNT OF THE CLAIMANT'S EARNINGS FOR THE CALENDAR WEEK WHICH INCLUDES THE LAST DAY OF WORK $

NOTE: CALENDAR WEEK BEGINS SUNDAY, ENDS SATURDAY

SIGNATURE OF OFFICIAL E W Kline TITLE Personnel Clerk
DATE 9.27.91 TELEPHONE NO. 813-638-1435

RETURN TO LOCAL OFFICE

RECEIVED
OCT 2 1991
MD DEPT OF EMPLOYMENT INS.
NORTHWEST LOCAL OFFICE
4025 MORTIMER AVENUE
BALTIMORE, MD 21215

EMPLOYER
OAKLEY TRANSPORT
P O DEED 4170
STATE OF MARYLAND
LARGO FL 33
BALTIMORE, MD. 21215
FL 33859-9990

RECEIVED OCT 2 7 1991

SEE LOCAL OFFICE INFORMATION ON REVERSE SIDE.
DEED.OUI 207 (Revised 8/90) (MABS) SIDE 1

NOTICE TO APPEALS DIVISION OF LOWER APPEAL

SSN: 124 36 2251 DATE RECEIVED/TAKEN BY LO: 10/25/91 ENTRY DATE: 10/25/91

LO: 45 PROGRAM TYPE: 08 BYB: 09/22/91 SPECIALIST ID: 45538

DATE OF APPEAL: 10/25/91 APPEAL DEADLINE: 10/31/91 TIMELY APPEAL? Y

LATE APPEAL REASON:

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

ISSUE: DISCHARGED FROM EMPLOYMENT WBA: $223.00

COMMENTS:

CLAIMANT: EUGENE W KLINE TELEPHONE: 301 367 1108
ADDRESS: 3612 WOODBINE AVENUE

BALTIMORE MD 21207

EMPLOYER: OAKLEY TRANSPORT TELEPHONE:
ADDRESS: P O BOX 4170

LAKE WALES FL 33859-9980

CWC: 539

REPRESENTATIVE: OAKLEY TRANSPORT
REPRESENTATIVE ADDRESS: P.O.BOX 4170 LAKE WALES FL 33859-9980
REPRESENTATIVE TELEPHONE: 813 638 1435

BENEFIT DETERMINATION

THE CLAIMANT WAS DISCHARGED OR SUSPENDED AS A DISCIPLINARY MEASURE BY OAKLEY TRANSPORT ON 09/06/91 BECAUSE THE CLAIMANT LOST HIS/HER LICENSE WHICH WAS REQUIRED TO PERFORM THE JOB. SINCE THE CLAIMANT'S ACTIONS WHICH RESULTED IN THE LOSS OF THE REQUIRED LICENSE WERE WORK RELATED, IT IS DETERMINED THAT THE CLAIMANT'S ACTIONS WERE A REGULAR AND WANTON DISREGARD OF HIS/HER OBLIGATIONS TO THE EMPLOYER AND THE ACTIONS ARE CONSIDERED GROSS MISCONDUCT IN CONNECTION WITH THE WORK WITHIN THE MEANING OF SECTION 8-1002 OF THE MARYLAND UNEMPLOYMENT INSURANCE LAW.

( ) BENEFITS ARE ALLOWED.
( ) BENEFITS ARE DENIED WEEK BEGINNING AND FOR THE WEEKS ENDING

(X) BENEFITS ARE DENIED WEEK BEGINNING 09/01/91 AND UNTIL THE CLAIMANT BECOMES REEMPLOYED AND EARNS AT LEAST TEN (10) TIMES HIS/HER WBA $2230.00
( ) 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 REPAID.

DET/UIA 941 (ISSUED 1/86) MABS

4

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

REQUEST FOR APPEAL HEARING

I wish to appeal the determination dated 10-16-91 written under section 8-1002
of the law because I feel that my financial penalty is quite
hard in this case I have a child in college and
Reason, if late appeal: need to take care of,

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

Eugene William Kleiner — Claimant's Signature
124-36-2251 — Social Security Number
Witness
10/25/91 — Date

REQUEST FOR LOWER APPEAL (I01)

SSN 124 36 2251 0 Name Check E KLI

New Address

CITY STATE ZIP CODE

Date of Appeal 10/25/91 Late Appeal? N

Late Appeal Reason

Type of Appeal 1 Appellant Code 1 Resolution Code 50

Sequence Number 08 Multiple Appeals? N QC? N

Comments

Date Appeal Received/Taken By Local Office 10/25/91

Appellant Representative Oakley Transport

Representative Address P.O. Box 4170

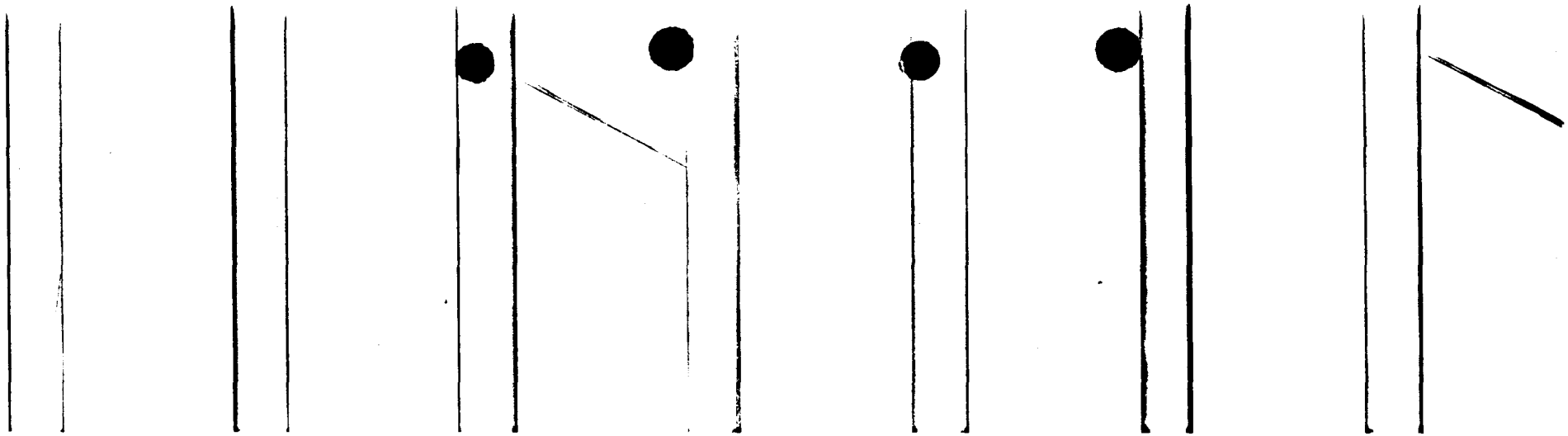
Lake Wales CITY FL STATE 33859 ZIP CODE 9780

Representative Phone 813 638 4455

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

5

DEED/OUI 222-C (Revised 1-89)



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.
EUGENE W. KLINE	OAKLEY TRANSPORT	10/30/91	9100539	124-36-2251

Appellant: CLAIMANT

Local Office No. 045

A hearing on this appeal will be held before the Hearing Examiner on NOVEMBER, 11 1991 (NOVEMBER, (ELEVENTH) 1991) at 12:00 P.M. EST (Please be on time)

HEARING LOCATION

DEPT ECONOMIC & EMPLOYMENT
DEVELOPMENT/APPEALS DIVISION
1100 N EUTAW STREET ROOM 511
BALTIMORE, MD 21201

Hearing Examiner:
MARY WELCOME

Mail To:
EUGENE W. KLINE
3612 WOODBINE AVENUE
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.

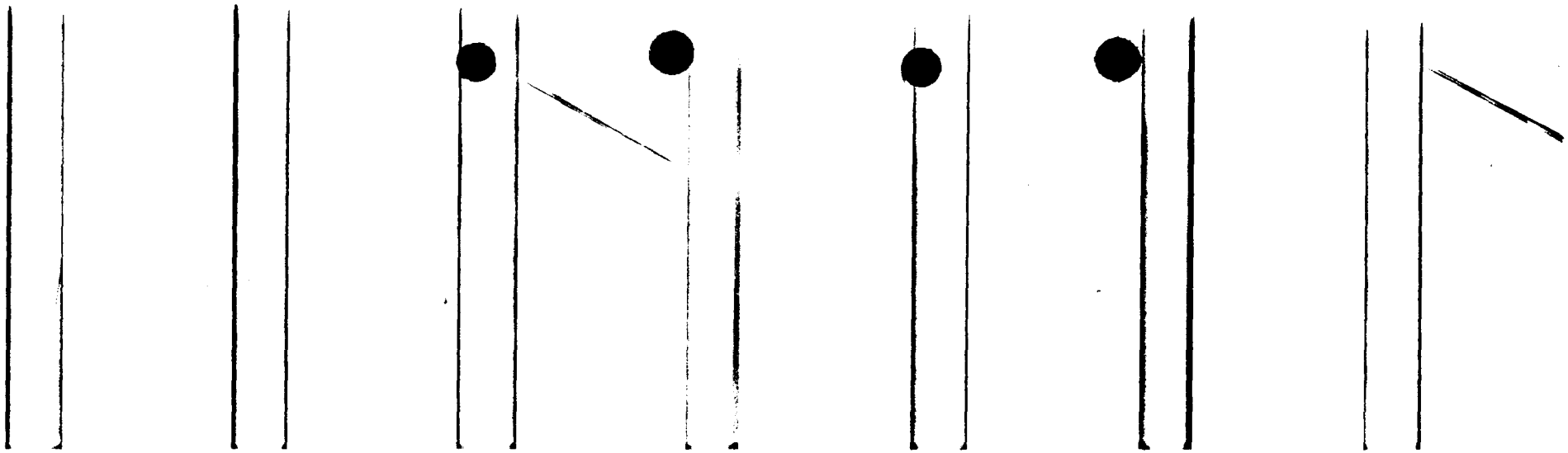
See the other side of this notice for important information.

PLEASE BRING THIS NOTICE WITH YOU.

DEED/OUM/AD 370 (Rev. 12/89)

Issue:

WHETHER THE CLAIMANT WAS SUSPENDED OR DISCHARGED FOR MISCONDUCT, OR GROSS MISCONDUCT, WITHIN THE MEANING OF MD CODE, TITLE 8, SECTION 1003 OR 1002 OF THE LAW. (SECTION 1001 MAY ALSO APPLY. SEE OTHER SIDE FOR OTHER ISSUES.



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1100 NORTH EUTAW STREET
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DEVELOPMENT/APPEALS DIVISION
1100 N EUTAW STREET ROOM 511
BALTIMORE, MD 21201

Hearing Examiner:
MARY WELCOME

Mail To:
OAKLEY TRANSPORT
P. O. BOX 4170
LAKE WALES, FL 33859

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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 five 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 five 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 will 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 Article 95A of the Annotated Code of Maryland and Section 24.02.06 of the Code of Maryland Agency Regulations.

10

DEED/OUI/AD 370 (Rev. 12/89)

(This page is a copy of the reverse side of the Appeal Hearing Notice.)

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

1100 North Eutaw Street
Baltimore, Maryland 21201

11/01/91

EUGENE W. KLINE
3612 WOODBINE AVENUE

BALTIMORE MD 21207

IMPORTANT NOTICE

UNEMPLOYMENT INSURANCE

APPEAL HEARING

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Bring this notice and/or the hearing appointment notice with you. Security guards will need to see these documents upon entering the building.

REMEMBER - YOUR APPEAL HEARING WILL BE HELD AS SCHEDULED ON VETERANS DAY, MONDAY, NOVEMBER 11, 1991

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8

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

1100 North Eutaw Street
Baltimore, Maryland 21201

OAKLEY TRANSPORT

11/01/91

P. O. BOX 4170
LAKE WALES FL 33859

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9

OAKLEY TRANSPORT, INC.

FAX (813) 638-2073

TRANSMITTAL COVER SHEET

FAX Number 410-333-7208

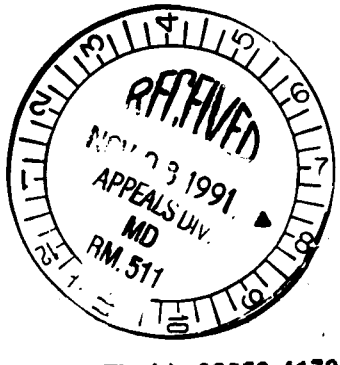
Company Maryland Department Employment Dev.

Attention Administrative Officer

From Oakley Transport / Irene

Total Number of Sheets Including Cover 6

DATE 11-8-91



10

OAKLEY
TRANSPORT, INC.

CORPORATE HEADQUARTERS:
101 ABC Road
P. O. Box 4170
Lake Wales, FL 33859

Phone: (813) 638-1435
FAX (813) 638-2073

November 8, 1991

Maryland Department of Economic &
Employment development
1100 North Eutaw Street
Baltimore, Maryland 21201

RE: EUGENE W KLINES
124-35-2251

Administrative Officer:

We have been advised of the notice to appear for an unemployment insurance appeal hearing on Monday, November 11, 1991. Scheduled time of the hearing is 12:00 P.M.

We are unable to appear but we have contacted the appeal court by phone, November 8, 1991 at 9:10 A.M. As per conversation with Ms. Jefferson, we are sending the necessary information for the appeal hearing.

Oakley Transport's personal representative is Eileen Bryan, Personnel Manager, phone (813) 638-1435.

Sincerely,

Irene Macomb
Insurance

KENTUCKY TERMINAL: 135 Gaines Drive - P.O. Box 1054 - Campbellsville, KY 42719 - Phone: (502) 465-6149 - FAX: (502) 465-2103
TEXAS TERMINAL: 126 Flecha Drive - Laredo, TX 78041 - Phone: (512) 727-8781 - FAX: (512) 727-8782

12

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.
EUGENE W. KLINE	DEVCO TRANSPORT	10/30/91	91BC539	126-16-8251

Appellant: CLAIMANT

Local Office No. 45

A hearing on this appeal will be held before the Hearing Examiner on NOVEMBER 11 1991 at 12:00 P.M. EST (Please be on time!)
NOVEMBER (ELEVEN) 1991

HEARING LOCATION

DEPT ECONOMIC & EMPLOYMENT
DEVELOPMENT/APPEALS DIVISION
1100 N EUTAW STREET ROOM 511
BALTIMORE, MD 21201

Hearing Examiner

MARY [illegible]

Mail To:

DAILY [illegible]
P. O. BOX 4170
LAKE WALES, FL 33859

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1991

DEED/OLM/AD 370 (Rev. 12/88)

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

1100 North Eutaw Street
Baltimore, Maryland 21201

OAKLEY TRANSPORT

11/01/91

P. O. BOX 4170
LAKE WALES FL 33859

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301 If you have a question about this notice please call 333-5040.

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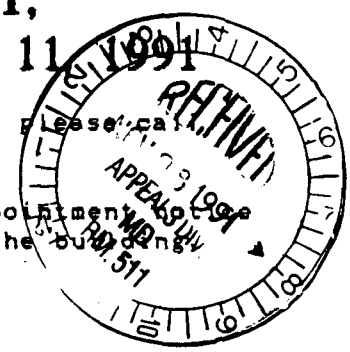

13

MARYLAND LIC#K 452-237-887-841
QBK:SD

EUGENE WILLIAM KLINES
3612 WOODBINE AVENUE(RES:)
BALTIMORE MD 21207

SOC.SEC: DOB:11-01-47 SEX:M
HGT:5-10 WT:285 EYES: HAIR:
REQUESTED AS/ALSO KNOWN AS:KLINES

DRIVER LICENSE INFORMATION

CLASS :CL-A CDL-H
ISSUED:05-14-90 EXPIRES:11-01-95
STATUS: SUSPENDED

MISCELLANEOUS/STATE SPECIFIC INFORMATION

CURRENT LICENSE STATUS:SUSPENDED.
CURRENT CDL STATUS:SUSPENDEDNDED.
CLASS A=ALL VEHICLES EXCEPT MOTORCYCLES
ENDORSEMENT:H=HAZARDOUS MATERIALS
03-28-88 ADDRESS CHANGE
THE RECORD REFLECTS ENTRIES FOR THE
PAST 36 MONTHSLECTS ENTRIES FOR THE

DRIVING RECORD INFORMATION

VIOL/SUSP:01-04-91 TYP: PTS:
CONV/REIN:01-17-91 V/C CODE:
VA 9111508-SPEEDING
CDL VEHICLE

VIOL/SUSP:07-22-91 TYP: PTS:
CONV/REIN: V/C CODE:
FLORIDA-RECIPROCITY-FAILURE TO COMPLY
SUSPENSION LETTER MAILED

VIOL/SUSP:07-22-91 TYP: PTS:
CONV/REIN: V/C CODE:
VIRGINIA-RECIPROCITY-FAILURE TO COMPLY
SUSPENSION LETTER MAILED

VIOL/SUSP:08-20-91 TYP: PTS:
CONV/REIN: V/C CODE:
SOUTH CAROLINA-RECIPROCITY-FAILURE TO
COMPLY
SUSPENSION LETTER MAILED

VIOL/SUSP:08-09-91 TYP: PTS:
CONV/REIN: V/C CODE:
FLORIDA-SUSPENDED-VIOLATED RECIPROCITY
AGREEMENT

VIOL/SUSP:08-09-91 TYP: PTS:
CONV/REIN: V/C CODE:
VIRGINIA-SUSPENDED-VIOLATED RECIPROCITY
AGREEMENT
TOTAL CURRENT POINTS 00

DAC RPT#:246-1 DAC ACCT#: 5248-
DAC REF#:540 9DPRMFNONE
DMV RPT DATE:08-30-91 DMV ACCT#:NONE

MARYLAND LIC#K 45[illegible]237-887-841
DBK:SD

EUGENE WILLIAM KLINES
3612 WOODBINE AVENUE(RES:)
BALTIMORE MD 21207

SOC.SEC: DOB:11-01-47 SEX:M
HGT:5-10 WT:285 EYES: HAIR:
REQUESTED AS/ALSO KNOWN AS:KLINES

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CONV/REIN: V/C CODE:
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CONV/REIN: V/C CODE:
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AGREEMENT

VIOL/SUSP:08-09-91 TYP: PTS:
CONV/REIN: V/C CODE:
VIRGINIA-SUSPENDED-VIOLATED RECIPROCITY
AGREEMENT
TOTAL CURRENT POINTS 00

DAC RPT#:246-1 DAC ACCT#: 5248-
DAC REF#:540 9DPRMFNONE
DMV RPT DATE:08-30-91 DMV ACCT#:NONE

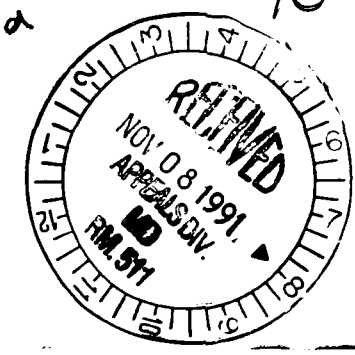
C

$78.00 - Virginia
58.00 - Virginia Pd 8/2/91
804-461-1919

Per Beverly- No record found

Per mm Board 9/3/91

15



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

TRANSCRIPT OF TESTIMONY

Heard before Mary Welcome Hearing Examiner

in the case of

Eugene W. Klines
3614 Woodbine Avenue
Baltimore, MD 21207

S.S. #124-36-2251

Appeal #91-CWC-539

Oakley Transport
P. O. Box 4170
Lake Wales, FL 33859-9980

APPEARANCES

Eugene W. Klines
- claimant

EMPLOYER NOT REPRESENTED

Mary Welcome
Hearing Examiner

TIME: 12:00 Noon
DATE: November 11, 1991
PLACE: Baltimore, MD

TRANSCRIBED BY: ALICE MARIE BROGDEN

16

This is Appeal #9100539. The claimant is Eugene W. Kline, K-L-I-N-E, social security #124-36-2251. The date of the hearing is November 11th, 1991. The employer is Oakley Transport. The issue is whether the claimant was suspended or discharge for misconduct or gross misconduct as as defined by Maryland Code, Title 8, Section 1002 or 1003. The claimant is present at the hearing. The employer is not. If you will raise your right hand, Mr. Kline, I will swear you in. OATH ADMINISTERED

Mr. Kline: Yes, I do.

Hearing Examiner: Okay. Your first day of work, was it July 31st, 1991?

Mr. Kline: Roughly that day. Approximately that date.

Hearing Examiner: Okay. And your last day, was that September 6th, 19--

Mr. Kline: Yes, it was.

Hearing Examiner: Okay. And what was your job?

Mr. Kline: Over-the-road tractor-trailer operator, operating out of forty-eight states and (inaudible) in Canada.

Hearing Examiner: Okay. And your salary?

Mr. Kline: Uh, basically, twenty-two cents per mile.

Hearing Examiner: Okay. And you were discharged?

Mr. Kline: Yes, I was.

Hearing Examiner: Okay. Tell me why.

Mr. Kline: At that time, they said I didn't pay off a ticket, a moving violation. I had paid the ticket off...

Hearing Examiner: Okay. Who's "they"?

Mr. Kline: Oakley Transport.

Hearing Examiner: Okay.

Mr. Kline: Oakley Transport said I didn't pay a ticket off and that I had to pay these tickets off. I paid the tickets off prior to...

Hearing Examiner: Are these speeding tickets, parking tickets or what?

Mr. Kline: Speeding tickets. I paid the tickets off but they had not cleared off of Maryland's Motor Vehicle license check. By them not clearing, this is why I was terminated.

Hearing Examiner: Okay. You're saying MVA did not clear them?

Mr. Kline: Yes.

Hearing Examiner: What had - Did you continue having a license?

Mr. Kline: My license was suspended then.

Hearing Examiner: By Maryland?

Mr. Kline: By Maryland.

Hearing Examiner: License suspended. So, therefore, you couldn't drive?

Mr. Kline: Right.

Hearing Examiner: All right. Do you have - Did you then clear - have it cleared?

Mr. Kline: I had paid the tickets off but they never cleared them off. And when the company ran a check for the abstract of my driver's license through their computer, they weren't cleared

off the computer. So this is why I was terminated. But, I'd already paid the tickets off.

Hearing Examiner: Okay. Was that the reason for your license suspension?

Mr. Kline: Right. Yes, it was.

Hearing Examiner: Could you do - All right. Once your license was suspended, what other job - You couldn't drive for the company anymore?

Mr. Kline: Right.

Hearing Examiner: Then,...

Mr. Kline: So, uh,...

Hearing Examiner: ...what option did they have...

Mr. Kline: They had...

Hearing Examiner: ...but to discharge you or suspend you or whatever?

Mr. Kline: They had - I don't know what other options they had because I could have either worked locally, right in the yard there or whatever. I don't know what other jobs I could have done for the company. I was coming out of Canada on a trip. This is when they notified me that my license had not cleared. To bring the truck into Delaware. Leave the truck at Delaware. Then go ahead and get my license straightened out.

Hearing Examiner: Okay. This is - Okay. Was it the Maryland

Motor Vehicles?

Mr. Kline: Yes.

Hearing Examiner: Did you have proof of payment?

Mr. Kline: Yes, I do.

Hearing Examiner: Did you take it to them?

Mr. Kline: I not - the company - I sent proof of payment to the company (inaudible)...

Hearing Examiner: Well, the company doesn't have anything to do with your license.

Mr. Kline: Well see, at that time, the company notified me that a suspension was gonna be on my license. I had sent the tickets off, mailing them off to be paid. I continued working, you understand? Sent them the receipts that the tickets had been paid as far as the stubs for the money orders and stuff like that that I had sent in. I continued working. At that time, you understand, while I was still working, Maryland had not cleared it off the computers. When they ran another check on my driver's license, it said my license was suspended. So, this is when they told me that they'd have to terminate me.

Hearing Examiner: Okay. Then when, when did they tell you about the speeding tickets?

Mr. Kline: This was prior to them terminating me.

Hearing Examiner: Okay. When?

Mr. Kline: I don't have the exact date.

Hearing Examiner: But when did you pay them?

Mr. Kline: These were paid in August. Let me - I have the exact dates they were paid.

Hearing Examiner: Okay. Had you acquired points?

Mr. Kline: No, not that I know of. It was nothing given to me in writing that said I had...

Hearing Examiner: Okay. Well, you do get points for speeding.

Mr. Kline: It was nothing given to me in writing that there were points against my license.

Hearing Examiner: Well, you always get points when you have speeding. That's not anything they need to send you. But you...

Mr. Kline: But I was still working at that time even though they gave me...

Hearing Examiner: Okay. Well, that doesn't - All right. You're not - You're missing it. When your license was suspended, MVA doesn't care and didn't know that you were working. And they're not gonna notify the employer. You have a license to operate.

Mr. Kline: Right.

Hearing Examiner: And it's up to you to keep your license effective...

Mr. Kline: But my license...

Hearing Examiner: ...and clear.

Mr. Kline: The only thing I had to do was pay the

tickets off that they informed me of.

Hearing Examiner: Okay. Well, let me see - Well, since - have you been to them - It would appear that once you found that your license was suspended, that you would go down and find out why are you still suspending my license when I paid the tickets.

Mr. Kline: This is why they said that they, my license, was under suspension. That the tickets weren't paid.

Hearing Examiner: Okay. Now, this is August 28th.

Mr. Kline: Right.

PAUSE

Hearing Examiner: Okay. Now, where is the notice that you received that - All right. This is - Your license is also revoked in Virginia.

Mr. Kline: See, it's no longer revoked in Virginia cause those were paid.

Hearing Examiner: Okay. Well, what about Maryland? Where's the evidence that you paid Maryland?

Mr. Kline: I didn't have a ticket in Maryland.

Hearing Examiner: Okay. Well, I thought you said that you did.

Mr. Kline: No, maam. I didn't have a ticket in Maryland. My driver's license is from Maryland and they were suspended because of those tickets out of Virginia. Are you following what I'm saying?

Hearing Examiner: Okay. Now, you have an official receipt from Prince George's County.

Mr. Kline: Right.

Hearing Examiner: Okay. That's Virginia.

Mr. Kline: See, Virginia...

Hearing Examiner: And you paid...

Mr. Kline: ...sent to Maryland and notified them that I hadn't paid these tickets off. Now, after I went and paid the tickets off, you understand me, Maryland still carried my license as suspended but the tickets were paid. When my - When Oakley ran the check of my driver's license,...

Hearing Examiner: Okay. Now, this is October. Had your license been cleared?

Mr. Kline: Yes, maam. My license is cleared now.

Hearing Examiner: Okay. Anything else?

Mr. Kline: These are just the receipts that I showed where I paid the tickets off. You understand me? This is - Ever since August the 7th. This is from - This is one of the receipts of the payment that I sent off to them. And this is just the receipt stubs that I sent to them.

Hearing Examiner: Okay. Now, from what I can see, some of these violations - August 2nd, $58; August 2nd, $58; August 2nd, $78; August 2nd....

23

Mr. Kline: So they've been paid ever since August in Virginia.

Hearing Examiner: Okay.

Mr. Kline: And Maryland hadn't cleared my license when they sent in for the abstract of their check. You understand me?

Hearing Examiner: AFFIRMATIVE.

Mr. Kline: So, by them not clearing my license at that time, this is why I was terminated.

Hearing Examiner: Okay. Now, they're talking about reinstatement. That they - That you couldn't be reinstated. No possibility of reinstatement. Have you been reinstated?

Mr. Kline: What, to...

Hearing Examiner: Oakley.

Mr. Kline: Oakley? I can go back to work at Oakley just as long as I can get my license once my license cleared up.

Hearing Examiner: I thought - And you're saying it is clear now?

Mr. Kline: Yes.

Hearing Examiner: But you haven't gone back to work?

Mr. Kline: No, maam.

Hearing Examiner: When did - When...

Mr. Kline: I have to go back all the way to Lake Wales, Florida.

Hearing Examiner: To do what?

Mr. Kline: For Oakley.

Hearing Examiner: Oh! Okay.

Mr. Kline: That's where they're out of.

Hearing Examiner: Okay. All right. I will - Okay. I'll make a decision on this and get it to you as soon as possible. Okay?

Mr. Kline: Okay.

Hearing Examiner: Uhm, wait a minute. Hold on a minute. Let me - There is something in here. "Driver's License Information: Status suspended as of - violation points..." - Okay. This is violations - reciprocity, failure to comply." These are all because - Okay. Suspended January 4th. Reinstated January 17th, speeding. And then suspension 7/22/91 in Florida. And this is reciprocity, failure to comply - suspension letter mailed. And suspension in South Carolina. Reciprocity, failure to comply. And you didn't receive any of these letters?

Mr. Kline: No, maam. I have - The one from South Carolina has been paid, too.

Hearing Examiner: How about Florida?

Mr. Kline: Yes, maam.

Hearing Examiner: Okay. They - Were they paid as of the time that you were discharged or...

Mr. Kline: Yes, maam.

Hearing Examiner: ...or you paid them afterwards?

Mr. Kline: I paid them before I was discharged.

Hearing Examiner: Okay. Well see, these suspensions go back - As of the 30th of August, these suspensions were in effect. I don't even see where they were suspended in Maryland. I see all the others, but I see...

Mr. Kline: See, Maryland is the license holder state.

Hearing Examiner: Yeah. I know Maryland is the license holder state but by reciprocity, all of these - you were in violation in all of these various places. "License is currently suspended. Okay. All right. I just wanted that mentioned on the record. READING FROM DOCUMENT

Mr. Kline: See, if they're carrying those as still suspended, you understand me, that I owed those tickets, here's the proof that I paid those tickets.

Hearing Examiner: You said you paid Florida, too?

Mr. Kline: I don't have that one here with me but I have the ones for the - showing that I paid Virginia off. I have the one for South Carolina, showing that one.

Hearing Examiner: Okay. I saw the - Where's the one for South Carolina?

Mr. Kline: This is the actual ticket here, but it's been

paid.

Hearing Examiner: Okay. The date this took place, 4/10.

Mr. Kline: That ticket has been paid.

Hearing Examiner: Okay. All right. Anything else?

Mr. Kline: NO RESPONSE.

Hearing Examiner: Okay. You'll get a decision from me as soon as possible. Okay?

Mr. Kline: Okay. Thank you.

Hearing Examiner: You'll receive it in the mail.

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

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

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

		Date:	Mailed: 11/14/91
Claimant:	Eugene W. Kline 3614 Woodbine Avenue Baltimore, MD 21207	Appeal No.:	91-CWC-539
		S. S. No.:	124-36-2251
Employer:	Oakley Transport P. O. Box 4170 Lake Wales, FL 33859-9980	L.O. No.:	45
		Appellant:	Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1002.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 29, 1991

— APPEARANCES —

FOR THE CLAIMANT:	FOR THE EMPLOYER:
Claimant - Present	Not Represented

FINDINGS OF FACT

The claimant was employed on July 31, 1991 and continued working until his separation on September 6, 1991. The claimant was a tractor trailer operator and was earning the equivalent of twenty-two cents per mile at the time of separation.

In order to be employed with this company, a valid operating

28

license is required. On or about August 30, 1991, the employer received a report from the Maryland Department of Motor Vehicles indicating that the claimant's license was suspended. In addition, the report showed that the claimant's license had also been suspended in South Carolina, Florida and Virginia. Because he no longer had a valid operating license, the claimant was discharged.

The claimant does not contest the fact that his license was suspended at the time of his discharge. He does, however, show that the basis of the suspension, speeding tickets in Virginia and Florida, had been paid. The claimant provided documentation that tickets in Virginia had been paid, however, he did not show the receipts for Florida and South Carolina. As of the date of this hearing, the status of the claimant's license remains suspended.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1002(a)(1)(i) provides that an individual shall be disqualified from benefits where he/she is discharged from employment because of behavior which demonstrates a deliberate and willful disregard of standards which the employer has a right to expect. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant was discharged for actions which meet this standard of the Law.

The claimant had the responsibility of keeping his operating license in effect. The suspensions in the three States may have been the result of the claimant's failure to pay the speeding tickets. However, the delay in the payment, if in fact they were paid in all three locations, was the claimant's fault and the employer had no alternative but to discharge him. As of the date of this hearing, the claimant's license is still under suspension.

Based upon the foregoing, the determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged for actions which amounted to gross misconduct as provided Maryland Code, Labor and Employment Article, Title 8, Section 1002.

Benefits are denied for the week beginning September 1, 1991 and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount ($2230) and becomes unemployed through no fault of his own.

29

The determination of the Claims Examiner is affirmed.

Mary Welcome
Hearing Examiner

Date of Hearing: 11/11/91
dma/Specialist ID: 45538
Cassette No.: 11706
Copies mailed on 11/14/91 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)

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

APPEAL OF HEARING EXAMINER DECISION TO THE BOARD OF APPEALS

In the matter of the Claim of: Eugene W. Kline

Social Security Number: 124-36-2251

THIS is an appeal of the Hearing Examiner's decision number 91-CWC-539 dated November 14, 1991.

NOW, within fifteen (15) days after the date of mailing or delivery of the notice of said decision, the undersigned requests a hearing on the said decision, before the Board of Appeals, alleging as reasons therefore that on or about August 2, the speeding tickets were paid, I sent proof of this to Oakly, at this time I continued to work, on September 6 I was notified, that my license was suspended. Very

Reason, if late appeal:

kk

Signed:

Date Filed: November 15, 1991

Address: c/o Project Placement
201 E. North Avenue
Baltimore, Maryland 21202

Witness:

Phone:

RECEIVED
NOV 15 1991
BOARD OF APPEALS

REQUEST FOR HIGHER APPEAL (I02)

SSN | | | | | | | | | Name Check | | | | |

New Address:

City: State: Zip Code:

Phone Number:

Date of Appeal: Late Appeal ?

Late Appeal Reason:

Appeal Number: Sequence Number: Appellant Code: Multiple Appeals ?

Date Appeal Forwarded to Appeals Division:

Appellant Representative:

31

Representative Address:

City: State: Zip Code:

Representative Phone:

DEED/OUI 374 (Revised 1-88) (MABS)

Maryland, I proved to Maryland MVA, the tickets that I hade payed, were not cleared of the Computer at that time, I am trying to show that, I payed the tickets, But Maryland MVA, Did not clear them Before, Oakly trasport rain a check in ~~august~~ september, this is what cause my Dismissal, the tickets were paid on August 2, at this time Virginia has been cleared off, South Carolina + Florida Has not, But has been paid, and not cleared off as of yet, I have Request documentation from Florida + South Carolina at this time,

in the report it says, that, the employer recived a report from the Maryland Department of Motor Vehicles suspended, if Maryland had cleard that tickets off I would not have been laid off

RECEIVED
NOV 15 1991
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) 333-5032

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

— DECISION —

Decision No.: 1478-BR-91

Date: Nov. 26, 1991

Claimant: Eugene W. Kline
c/o Project Placement
201 E. North Avenue
Baltimore, MD 21202

Appeal No.: 91-CWC-539

S. S. No.: 124-36-2251

Employer: Oakley Transport
P.O. Box 4170
Lake Wales, FL 33859-9980

L. O. No.: 45

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 8-1002 of the law; whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

— 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 December 26, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner, but there is no effect on the claimant.

33

The claimant was an interstate tractor-trailer driver. His employer terminated him because his license to drive was suspended.

When an employee voluntarily takes an action that results in the employer having no choice but to discharge him, the case is considered to be a voluntary quit within the meaning of Section 8-1001 of the Labor and Employment Article. This is a "constructive voluntary quit."

The doctrine of constructive voluntary quit is strictly limited to cases in which both factors are present: (1) the employee's action must be voluntary; and (2) the employer has no choice, legally or contractually, but to discharge the claimant.

The Board has repeatedly ruled that a truck driver who loses his license through his own actions has constructively voluntarily quit. In such a case, it is always clear that the employer has no legal option but to terminate the claimant's services. In most cases, it is also clear that the truck driver's voluntary actions (e.g., speeding) caused the driver to lose his license in the first place.

There is always a chance that a truck driver lost his license innocently, through a combination of circumstances that were not his fault. In this case, the claimant argues that it was not his fault that his license was suspended. If losing his license is the result of circumstances completely beyond his control, then his separation from employment would not be regarded as a voluntary quit at all. He would be eligible for unemployment benefits for having lost his job through no fault of his own.

This claimant lost his license because he received speeding tickets in Florida, South Carolina and Virginia. It is unknown whether he showed up in court in these three states to contest the charges. In each state, he was ordered to pay a fine (presumably because he was found guilty, or admitted guilt). He did not pay these fines on time, and his license was suspended. Because he could no longer legally drive, he lost his job.

The claimant argues that he did pay the fines and that the various states simply failed to register this on their computers fast enough to keep his license from being suspended. This argument ignores completely the fact that he was found guilty of speeding in three states, and the possibility that the speeding itself may have caused the suspension of his license.

But even if the driving offenses themselves are ignored, the fact remains that the claimant did not pay the fines involved when they were due. The claimant's own statement, taken when he first applied for benefits, made this clear: "I had paid my tickets two weeks after I was discharged."

The claimant committed speeding violations in three states, then neglected to pay the resulting fines until it was too late. By the time he paid the speeding fines, his license had already been suspended and he had lost his job. His actions in speeding, then failing to pay the tickets on time, were voluntary acts, and they gave the employer no legal choice but to discharge him. This is a constructive voluntary quit. Since neither good cause nor valid circumstances have been shown, the maximum penalty must be imposed under Section 8-1001.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning September 1, 1991 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($2,230), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed, but there is no effect on the claimant.

Thomas W Keech
Chairman

Hazel A. Warnick
Associate Member

K:HW
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

35

EUGENE W. KLINES	* IN THE
vs.	* CIRCUIT COURT
OAKLEY TRANSPORT	* FOR
and	* BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	* #91358008/CL142033 *

ORDER OF COURT

The aforegoing Motion to Extend Time for Filing the Administrative Record having been read and considered, it is this 7 day of Feb, 1992, by the Circuit Court for Baltimore City, ORDERED:

That the time for filing the administrative record in the above-captioned appeal be extended and that the record in this case be filed on or before February 22, 1992.

JUDGE

EUGENE W. KLINES	FILED	* IN THE
vs.	FEB 6 1992	* CIRCUIT COURT
OAKLEY TRANSPORT	CIRCUIT COURT FOR BALTIMORE CITY	* FOR
and		* BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development		* #91358008/CL142033 *

(3) EJB

MOTION FOR EXTENSION OF TIME FOR FILING THE ADMINISTRATIVE RECORD

The Board of Appeals, Department of Economic and Employment Development ("the Board"), an Appellee herein requests that the time for filing the administrative record in this unemployment insurance appeal be extended. The grounds for its Motion are as follows:

1. Pursuant to Section 8-506(d) of the Labor and Employment Article of the Maryland Annotated Code, the Board is responsible for keeping records of testimony in proceedings before the Department of Economic and Employment Development regarding any appeals from determinations of unemployment insurance claims. Records in these cases are provided to claimants/appellants at no cost.

2. In this case, Eugene W. Klines ("Klines") Appellant, filed his Order and Petition for Appeal on December 24, 1991 pursuant to Rules B2.a and B2.e. Kline's Petition for Appeal was received by the Board on December 24, 1991.

3. The Board's Answer in this appeal is being filed concurrently with this Motion.

4. The administrative record was due to be filed in circuit court, pursuant to Rule B7.a, by January 23, 1992.

8

5. The Board experienced difficulty locating its appeals file and cassette which contain documentation germane to this appeal and the testimony adduced before the Hearing Examiner at the administrative hearing. The appeals file and cassette were delivered to the Board's transcriber on January 31, 1992. Because of the above-described circumstance, the Board's transcriber could not complete preparation of the administrative record in this appeal before the time for filing the administrative record had expired. It was therefore impossible for the Board to file the record in this appeal by January 23, 1992.

6. Rule B7 b allows this Court to extend the time for filing the administrative record to 90 days after the Board's receipt of the Petition for Appeal.

7. The record in this case will be transmitted to this Court on or before February 22, 1992, in less time than the Rule allows.

8. This case has not yet been scheduled for hearing, so no party will be prejudiced by the Board's request.

WHEREFORE, the Board requests that the time for filing the administrative record in this case be extended to February 22, 1992.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Lynn Weiskittel nep

Lynn Weiskittel
Assistant Attorney General
217 East Redwood Street
11th Floor
Baltimore, MD 21202
Phone: (301) 333-4813

AFFIDAVIT

I SOLEMNLY AFFIRM, under penalties of perjury, that the aforegoing is true to the best of my knowledge, information and belief.

Lynn Weiskittel nep

Lynn Weiskittel

EUGENE W. KLINES	* IN THE
vs.	* CIRCUIT COURT
OAKLEY TRANSPORT	* FOR
and	* BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	* #91358008/CL142033 * *

STATEMENT OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION FOR EXTENSION OF TIME FOR FILING THE ADMINISTRATIVE RECORD

Art. 95A, Section 8-506(d) of the Labor Article and Employment Article of the Maryland Annotated Code, clearly places the authority for preparation of the administrative record for the circuit court in unemployment insurance appeals with the Board of Appeals, Department of Economic and Employment Development (the "Board"). The Board is responsible for preparing and overseeing the submission of its administrative records in a timely manner in all such appeals.

Because the Board experienced difficulty in retrieving its file in this case which contains all relevant documentation in this appeal, including the cassette containing the testimony adduced before the Hearing Examiner, the transcriber did not have sufficient time to complete the preparation of the administrative record for filing with this Court prior to its due date of January 23, 1992. Consequently, the administrative record could not be filed in a timely manner.

Rule B7.b specifically provides that upon the application of any party, and for sufficient cause shown, this court can extend the time for filing the record to a period not exceeding

90 days after the receipt of the first copy of the Petition of Appeal.

In this case, the Board is requesting an extension of 30 days, which is less time than the rule allows. The delay caused by the Board's request will not prejudice any party to the administrative appeal, because appropriate Memoranda cannot be submitted pursuant to Rule B12, nor can the court hear this case before the record is filed.

This is an unexpected impediment due to the Board's inability to expeditiously locate the appeals folder and cassette tape containing relevant file documentation and the sworn testimony in connection with this appeal. All parties stand to benefit by having an accurate and complete record filed with this Court. Therefore, the Board requests that its Motion be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Lynn Weiskittel

Lynn Weiskittel
Assistant Attorney General
217 East Redwood Street
11th Floor
Baltimore, MD 21202
Phone: (301) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 1992, I mailed a copy of the aforegoing Motion for Extension of Time for Filing the Administrative Record, Statement of Grounds and Authorities, and proposed Order of Court to Eugene W. Klines, c/o Project Placement, 201 East North Avenue, Baltimore, MD 21202 and to Oakley Transport, P.O. 4170, Lake Wales, FL 33859-9980.

Lynn Weiskittel mcf

Lynn Weiskittel

EUGENE W. KLINES	* IN THE
vs.	* CIRCUIT COURT
OAKLEY TRANSPORT	* FOR
and	* BALTIMORE CITY
BOARD OF APPEALS Department of Economic and Employment Development	* #91358008/CL142033 *

ORDER OF COURT

The aforegoing Motion to Extend Time for Filing the Administrative Record having been read and considered, it is this _____day of _____, 1992, by the Circuit Court for Baltimore City, ORDERED:

That the time for filing the administrative record in the above-captioned appeal be extended and that the record in this case be filed on or before February 22, 1992.

_____

J U D G E

FILED

FEB 6 1992

CIRCUIT COURT FOR
BALTIMORE CITY

EUGENE W. KLINES	*	IN THE
Appellant	*	CIRCUIT COURT
vs.	*	FOR
OAKLEY TRANSPORT	*	BALTIMORE CITY
and	*	#91358008/CL142033
BOARD OF APPEALS Department of Economic and Employment Development	*	
Appellees		

A N S W E R

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

1. That it denies the allegation in said Petition.

2. That pursuant to Section 8-512(d) of the Labor & Employment Article, 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 8-512, 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 nef.j.

Amy S. Scherr
Assistant Attorney General

Lynn Weiskittel nef.j.

Lynn Weiskittel
Assistant Attorney General
217 East Redwood Street
11th Floor
Baltimore, Maryland 21202
Telephone: (301) 333-4813

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 Oakley Transport, P.O. Box 4170, Lake Wales, FL 33859-9980.

Respectfully submitted,

Amy S. Scherr nef.j.

Amy S. Scherr
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 1992, I mailed a copy of the aforegoing Answer to Eugene W. Klines, c/o Project Placement, 201 East North Avenue, Baltimore, MD 21202 and to Oakley Transport, P.O. Box 4170, Lake Wales, FL 33859-9980.

Amy S. Scherr nef.j.

Amy S. Scherr

EUGENE W. KLINES
201 East North Ave
Baltimore MD 21202
Claimant

v.

BOARD OF APPEALS
DEPARTMENT OF ECONOMIC AND
EMPLOYMENT DEVELOPMENT
STATE OF MARYLAND
1100 North Eutaw Street
Baltimore, Maryland 21202

and

OAKLEY TRANSPORT
P.O. Box 4170
LAKELAND, FL. 33803-4980

Employer

IN THE CIRCUIT COURT FOR BALTIMORE CITY

FILED
DEC 24 10
CIRCUIT COURT FOR BALTIMORE CITY

Case No.: 91358008

CL 142033

ORDER FOR APPEAL

Please enter an appeal on behalf of EUGENE W. KLINES, In proper person, from the decision no. 1478-BR-91 issued by the Board of Appeals, Department of Economic and Employment Development, State of Maryland, and rendered in the above-captioned matter on NOVEMBER 26, 1991.

Eugene W Klines
Claimant

124-36-2251
Social Security Number

301-837-1481
Telephone Number

COSTS WAIVED

EUGENE W. KLINES
Claimant

v.

BOARD OF APPEALS
DEPARTMENT OF ECONOMIC
EMPLOYMENT DEVELOPMENT
STATE OF MARYLAND
1100 North Eutaw Street
Baltimore, Maryland 21202

and

Oakley Transport
POBox 4701
Lake Wales FL 33859-9980
Employer

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No.: _____

PETITION

The Petition of EUGENE W. KLINES, in proper person, respectfully represents:

1. Claimant is aggreived by a decision of the Board of Appeals which denied to him/her unemployment insurance benefits rightfully due him/her as a result of his/her employment.

2. The Board of Appeals and the Hearing Examiner erred in the following manner: (State your reasons for taking the appeal).

A. Denial of benefits was based on Claimant's failure to pay outstanding tickets on a timely basis.

B. Claimant in fact Paid All Outstanding Tickets by 8/2/91; Employment Terminated 9/6/91; filed for unemployment 9/23; Hearing 11/1/91 = Denial

C. MD's Continued Refusal to Reinstate Claimant's Driver's License and therefore Claimant's complete inability to be employed in this profession is a result of other States failure to provide proper, & timely notice to MD that Claimant has in fact Paid Tickets, therefore Denying Claimant of Protect. and Due Process.

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

Eugene W Kleines
Claimant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of DECEMBER, 19 91, a copy of the foregoing Petition was mailed/delivered to ~~Alexander Wright, Jr., and~~ Amy S. Scherr, Counsel for the Department of Economic and Employment Development, State of Maryland, 217 East Redwood Street, 11th Floor, Baltimore, Maryland 21202, AND TO OAKUM TRANSPORT, P.O. BOX 4170, CAPE COAL, FLA. 33459-9980.

Eugene W Kleines
Claimant

1991

TL
2-2-10
94 Images

HALL VS PRIEST Box 1803 Case No. 91303043
[MSA T2691-4440, OR/12/11/74]
File should be named msa_sc5458_82_150_[full case number]-####

THOMPSON VS DEPART.OF PUBLIC SAFETY Box 1869 Case No. 91340071
[MSA T2691-4507, OR/12/13/14]
File should be named msa_sc5458_82_150_[full case number]-####

SAMET VS INSURANCE COMM., ET. AL. Box 1892 Case No. 91354017
[MSA T2691-4530, OR/12/13/37]
File should be named msa_sc5458_82_150_[full case number]-####

THOMPSON VS DEPT. OF HUMAN RESOURES Box 1892 Case No. 91354021
[MSA T2691-4530, OR/12/13/37]
File should be named msa_sc5458_82_150_[full case number]-####

KLINERS VS BD. OF APPEALS DEPART.OF ECON. Box 1896 Case No. 91358008
[MSA T2691-4534, OR/12/13/41]
File should be named msa_sc5458_82_150_[full case number]-####

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