

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
One Judiciary Square  
441 Fourth Street, NW  
Washington, DC 20001-2714  
TEL: (202) 442-9094 · FAX: (202) 442-4789

A.B.

Appellant/Claimant

v.

LOCAL FOOD STORE, INC.

Appellee/Employer

Case No.: 2012-DOES-00853

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**FINAL ORDER**

**I. INTRODUCTION**

- A. Parties:** Claimant A.B. and Employer Local Food Store, Inc. Claimant represented himself and Employer was represented by Assistant Manager B.C.
- B. Issue:** The District of Columbia Department of Employment Services (“DOES”) issued a Claims Examiner’s Determination (“Determination”) about Claimant’s unemployment benefits. Claimant has appealed the Determination and requested a hearing.<sup>1</sup> Is Claimant disqualified from receiving unemployment compensation benefits because of the reason for Claimant’s separation from employment?
- C. Date and Time of Hearing:** June 6, 2012, at 12:15 p.m.
- D. Witnesses:** Claimant A.B. Assistant Store Manager B.C. for Employer.
- E. Exhibits:** Employer’s Exhibits 200 – 202.
- F. Result:** Employer has met its burden of proving, by a preponderance of the evidence, that Claimant committed an act that constitutes work-related gross misconduct. Accordingly, the Claims Examiner’s Determination is affirmed. Claimant remains disqualified from receiving unemployment compensation benefits.

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<sup>1</sup> No eligibility issue has been raised or preserved under the District of Columbia Unemployment Compensation Act, D.C. Official Code §51-109, such as base period eligibility, and availability for or ability to work.

## II. JURISDICTION

The request for hearing was timely, based on its filing date and the mailing date of the Determination.<sup>2</sup> Jurisdiction is established.

## III. FINDINGS OF FACT

Employer owns and operates a local food store in Northwest, D.C. Employer initially hired Claimant in October 2006, and Claimant has worked for Employer “on and off” since that time. At all times relevant, Claimant worked as a Crew Chief at the Northwest, D.C. store. Mr. B.C. was the Assistant Store Manager.

On April 17, 2012, Claimant told B.C. that he was only going to work in another section that day, and that he would only listen to Store Manager C.D.<sup>3</sup> regarding performing work at the store. C.D. told Claimant that he had to listen to B.C. when C.D. is not at the store. Exhibit 200. At some point during his conversation with C.D., Claimant became upset with C.D. and told him to “fuck off.” C.D. then told Claimant to go home and not to come back. *Id.*

Soon thereafter, Claimant left the store and went to the gym, but returned to the store around 11:30 p.m. Sometime between 11:40 p.m. and 12:00 a.m., Claimant entered B.C.’s office and punched B.C. in the face and upper body. Exhibit 201. Claimant hit B.C. because he was upset with him, and noted that B.C. abused his authority as the Assistant Store Manager. Claimant’s attack upon B.C., who attempted to defend himself, lasted approximately five minutes. Two other employees came into B.C.’s office and broke up the fight.

After the incident, Claimant went home and B.C. called C.D., who had left the premises around 10:50 p.m., and told him that Claimant had hit him. Exhibit 200. C.D. told B.C. to call the police, who contacted Claimant at his home and told him to return to the store. When Claimant returned to the store, Metropolitan Police Department (“MPD”) officers handcuffed and arrested him. An MPD Incident Report dated April 18, 2012, states that Claimant punched B.C. three or four times in the face, and that Claimant was observed taking Employer’s money from the floor in Employer’s office. Exhibit 202.

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<sup>2</sup> D.C. Official Code § 51-111(b); OAH Rules 2812.3 and 2983.1.

<sup>3</sup> At the hearing, C.D. was referred to as “Chuck”

On April 18, 2012, Claimant and C.D. notified Employer's headquarters about what had occurred between Claimant and B.C. on April 17, 2012. C.D. requested that Claimant not be allowed to work at any Local Food Store, Inc. locations in the future. Exhibit 200. At some point thereafter, Employer terminated Claimant's employment for fighting with B.C. on April 17, 2012. Prior to his termination for fighting with B.C., Claimant had been involved in several fights with co-workers during his employment at Local Food Store, Inc.

On June 5, 2012, Claimant pled guilty to simple assault in the Superior Court for the District of Columbia for his attack upon B.C.

#### IV. DISCUSSION AND CONCLUSIONS OF LAW

Under the D.C. Unemployment Compensation Act, a claimant who is fired for misconduct may be disqualified from receiving unemployment benefits.<sup>4</sup> If an employer believes a claimant should be disqualified for misconduct, the employer must prove it.<sup>5</sup>

There are two levels of disqualifying misconduct: "gross" and "other than gross."<sup>6</sup> "Gross" misconduct is the more serious of the two levels and includes any act that "deliberately or willfully violates the employer's rules, deliberately or willfully threatens or violates the employer's interests, shows a repeated disregard for the employee's obligation to the employer, or disregards standards of behavior which an employer has a right to expect of its employee."<sup>7</sup> "Other than gross" misconduct, also known as simple misconduct, includes "acts where the severity, degree, or other mitigating circumstances do not support a finding of gross misconduct."<sup>8</sup> The period of disqualification for simple misconduct is shorter than the period of disqualification for gross misconduct.<sup>9</sup>

A claimant will not be disqualified without a finding of misconduct based on Employer's reasons for the discharge.<sup>10</sup> Any misconduct disqualification requires proof that a claimant

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<sup>4</sup> D.C. Official Code § 51-110(b); 7 D.C. Municipal Regulations (DCMR) 312.

<sup>5</sup> 7 DCMR 312.2 and 312.8; *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 613 (D.C. 2011).

<sup>6</sup> D.C. Official Code §§ 51-110(b)(1) and (2).

<sup>7</sup> 7 DCMR 312.3.

<sup>8</sup> 7 DCMR 312.5; *Odeniran v. Hanley Wood*, 985 A.2d 421, 425 (D.C. 2009).

<sup>9</sup> D.C. Official Code § 51-110(b).

<sup>10</sup> *Chase v. D.C. Dep't of Emp't Servs.*, 804 A.2d 1119, 1123 (D.C. 2002) (internal citation omitted).

intentionally disregarded an employer's expectation and proof that the claimant understood the conduct at issue could lead to discharge.<sup>11</sup>

In the District of Columbia, gross misconduct may include, but is not limited to, the following:

- a. Sabotage;
- b. Unprovoked assault or threats;
- c. Arson;
- d. Theft or attempted theft;
- e. Dishonesty;
- f. Insubordination;
- g. Repeated disregard of reasonable orders;
- h. Intoxication, the use of or impairment by an alcoholic beverage, controlled substance, or other intoxicant;
- i. Use or possession of a controlled substance;
- j. Willful destruction of property;
- k. Repeated absence or tardiness following warning.

7 DCMR 312.4.

The evidence of record demonstrates that on April 17, 2012, Claimant became upset with Employer's Assistant Store Manager B.C. and punched B.C. in the face and upper body area. The evidence further demonstrates that MPD officers arrested Claimant for his attack on B.C., and that Claimant subsequently pled guilty to simple assault in the Superior Court for the District of Columbia for his attack upon B.C..

Here, I find that Claimant's unprovoked attack upon B.C., which occurred several hours after Claimant had been ordered to leave the worksite, was a willful, deliberate, and intentional violation of Employer's interests and standards of behavior that an employer has a right to expect of its employees and, therefore, constitutes gross misconduct. 7 DCMR 312.3. I further note

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<sup>11</sup> See *Hamilton v. Hojeij Branded Food, Inc.*, 41 A.3d 464, 476 (D.C. 2012); *Bowman-Cook v. Wash. Metro. Area Transit Auth.*, 16 A.3d 130, 135 (D.C. 2011) (proof of intentionality); *Capitol Entm't Servs., Inc. v. McCormick*, 25 A.3d 19, 25 (D.C. 2011) (proof of understanding that conduct could lead to discharge) (citing *Hickenbottom v. D.C. Umemp't Comp. Bd.*, 273 A.2d 475, 478 (D.C. 1971)).

that an unprovoked assault upon another person is a specific example of gross misconduct under the Act and its governing regulations. 7 DCMR 312.7b.

In concluding that Claimant's actions constituted gross misconduct and not simple misconduct, I note that Claimant's unprovoked attack upon Claimant was serious and egregious, could have resulted in serious harm to another person, and was not the first time that Claimant had been involved in fights with co-workers while working for Employer. Further, I do not find that there are any mitigating circumstances that would warrant this administrative court to find that Claimant's actions constituted "simple" misconduct.

At the hearing, Claimant admitted that he had punched B.C., and that he had been in fights with other persons while working for Employer, but asserted that he was not discharged for fighting with B.C. Claimant argued that he was terminated for telling Store Manager C.D. to "fuck off." Claimant's assertion is not persuasive for the following reasons. B.C. testified credibly at the hearing that, while C.D. did send Claimant home prior to the incident between him and Claimant, Claimant was terminated for fighting with B.C. Indeed, the evidence presented at the hearing demonstrates that both C.D. and B.C. contacted Employer's headquarters concerning what had occurred between Claimant and C.D., and that C.D. had requested that Claimant not be allowed to work at any of Employer's stores in the future.

Lastly, I am aware of an allegation that Claimant had taken Employer's money during the April 17, 2012, incident. However, Employer has not introduced sufficient evidence in this matter to prove that allegation.

Based upon the totality of the evidence, I find that Employer has met its burden of proving that Claimant committed an act that constituted work-related gross misconduct. Therefore, the Claims Examiner's Determination is affirmed. D.C. Official Code §§ 51-110(b) and 51-111(e). Claimant remains disqualified from receiving unemployment compensation benefits.

## **V. ORDER**

Based upon the foregoing and the record in this matter, it is:

**ORDERED**, that the Claims Examiner's Determination is **AFFIRMED**; and it is further

**ORDERED**, that Claimant remains **DISQUALIFIED** from receiving unemployment compensation benefits; and it is further

**ORDERED**, that the appeal rights of any person aggrieved by this Order are stated below.

**DATED:** June 14, 2012

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James C. Harmon Jr.  
Administrative Law Judge