DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS JOB SERVICE DIVISION

**Unemployment Compensation** 

## APPEAL TRIBUNAL DECISION

n the matter of the memployment benefit claim of

involving the account of

161038

MARK W. LANCERKVIST 120 W. Front Street Traverse City, MI 49684

HEWSPAPERS. INC. 333 West State Street Milwaukee, WI 53203

mploye,

Appellant

Employer,

Respondent

## APPEAL AND BENEFIT RIGHTS

This decision will become final unless either party files a written petition for review by the Labor & Industry Review Commission. If such petition is filed, it must be received at a local Job Service office within 14 days from date of this decision, it must state specific reasons or grounds for review and it must contain the claimant's name and social security number. Such a review is conducted without the attendance of parties and no further hearing will be held unless the Commission so orders.

Any benefits that may be payable in accordance with this decision will not be withheld pending the expiration of the appeal period or if an appeal is filed, as required by section 108.09(9)(a) of the statutes. However, if a final decision in this case results in denial of benefits, any benefits already paid pursuant to this decision may be deemed an erroneous payment which the employe will be

required to repay.
"A PARTY who failed to appear but who desires another opportunity for a hearing must, within 7 days after the date of this decision, show to the Appeal Tribunal a satisfactory explanation of such failure."

cc: MARK LAGERKVIST 2629 S. 99th St. Milwaukee, WI 53227 HEARING NO.

79-A-62374HC

LO & S.S. NO.

15/508-70-8687

DATE OF

**DETERMINATION** 

April 17, 1979

DATE OF

APPEAL

: April 30, 1979

DATE OF

HEARING

May 25, 1979 July 18, 1979

PLACE OF

Milwaukee, WI

HEARING

Traverse City, MI

EXAMINER

Daniel O. Wolter - 71

**DATE DECISION** 

**ISSUED & MAILED** 

August 8, 1979

For Department Use Only

F R AF AR

MF

ISSUE CODE

04(05)(A)

See attachment for applicable statutory or administrative code provision indicated by

**APPEARANCES** 

or the Employe or Claimant Attorney/Agent, if any)

For the Employer (Attorney/Agent, if any)

in person at Traverse City, HI

did not appear in Milwaukee, WI

A DEPARTMENT DEPUTY'S INITIAL DETERMINATION HELD: that in week 50 of 1978, the employe was discharged for misconduct connected with his employment and denied benefits.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

## FINDINGS OF FACT and CONCLUSIONS OF LAW

The employe worked for about five months as an investigative reporter for the employer, a newspaper. His last day of work was December 14, 1978 (week 50), when he was discharged.

In denying benefit eligibility, the employer alleged that the employe consumed alcoholic beverages during work hours in violation of the employer's policies on December 13, 1978 (week 50), that he failed to keep a business related appointment during the time he was consuming alcoholic beverages, and that he became abusive and used obscene language when approached by the employer's day editor regarding the December 13 events.

However, the employe had started work at 9 a.m. on December 13 and had finished his scheduled work duties when he went to a professional club and consumed alcholic beverages after 5 p.m. on this day. He had put in overtime hours previously in this week and was permitted under his work arrangement to take off of work when he did on December 13. He forgot to meet an individual, who was also employed by the employer, regarding a matter which he had agreed to discuss with the co-worker as a personal favor on his own time. He called this co-worker at 6:45 p.m., when he remembered that he had set up an appointment at 6 p.m. The co-worker said that the co-worker would prefer to meet with him the following morning after he had offered to immediately meet with the coworker. The employe met with the co-worker on his own time the following morning prior to his normal starting time and was approached by the employer's day editor in regards to consuming alcoholic beverages on the previous day. He was not insubordinate and did not use any obscene language towards the day editor.

The burden of establishing that an employe was discharged for misconduct connected with employment is on the employer. The employer failed to appear at the hearing scheduled for its testimony in Milwaukee on May 25, 1979, and no evidence was adduced to establish any conduct on the part of the employe that evinced a wilful and substantial disregard of the employer's interests.

The appeal tribunal therefore finds that the employe was discharged in week 50 of 1978, but not for misconduct connected with his employment, within the meaning of section 108.04(5) of the statutes.

## DECISION

A department deputy's initial determination is reversed. Accordingly, benefits are allowed, if the employe is otherwise qualified.

Vaniel O. Walter