



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

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

— DECISION —

	Decision No.:	1 -BR-90	
	Date:	January 4, 1990	
Claimant:	Kimberly Merritt	Appeal No.:	8912592
	S. S. No.:		
Employer:	L O. No.:	3	
	Appellant:	CLAIMANT	

Issue: Whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) of the law; whether the claimant filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c)(3) of the law.

—NOTICE OF RIGHT OF APPEAL TO COURT —

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

February 3, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

One issue in this case is whether the claimant filed a late appeal, without good cause, within the meaning of Section 7(c)(3) of the law. This issue was never clearly developed at the hearing. In such a case, however, the burden is on the agency to show at least that a certain determination was mailed on a certain date. A computerized form (Form DET/UIA 941) indicates that the appeal was not timely, but many entries on the form, including the "appeal deadline" and the entire text of the actual determination, are scratched out or pasted over by hand. The Board has previously ruled that the form 941, in this condition, does not meet the agency's burden of proof that a certain determination was mailed on a certain date.

The Hearing Examiner apparently failed to notice some of the claimant's testimony concerning the late appeal. This testimony was given prior to the Hearing Examiner realizing that late appeal was an issue in the case. (This issue was not on the hearing notice.) The claimant's testimony was that she did receive a statement that her benefits were denied, simultaneously with a notice to come in to the unemployment office, and that she assumed that either the notice cancelled out the determination or that her subsequent visit to the office took care of the appeal. Although the claimant ¹should have been more closely questioned on this issue, her testimony was unrefuted and would establish good cause for filing a late appeal even if the agency had shown that she did file a late appeal.

On the merits, the Board notes that the record is also unclear. The claimant was apparently disqualified under Section 4(c) of the law for not being able to work and available for work. The basis of this determination, however, was the fact that the claimant did not report for an interview in the unemployment office scheduled for September 5, 1989. The claimant returned the interview form by September 5, stating on it that she would be out of town that day. She was back in town on September 6, and she reported to the office when next summoned. The record is not clear as to why the claimant was out of town, but it does show that the claimant's employment applications were exclusively made with out-of-state employers (airlines). Under the circumstances, her missing one local office appointment because of her being out

¹Admittedly, this would have been difficult for the Hearing Examiner to accomplish, given the questionable state of the form 941 in the file.

of town that one day is² not enough to disqualify her under Section 4(c) of the law.

It also appears that the reason for the scheduled interview was to determine if the claimant should have been disqualified for being "not unemployed." It is unclear what was meant by this issue. In any case, the agency later decided that the claimant should not have been denied benefits under this rationale. The Board, therefore, concludes that there is no justification in denying the claimant benefits under this rationale for the two weeks in question in this case.

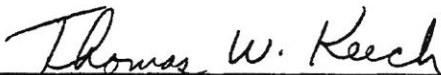
There is no proof that the claimant filed a late appeal. Even if there were proof, the claimant showed "good cause" under Section 7(c)(3). On the merits, no reason has been shown to disqualify the claimant under Section 4(c) of the law.

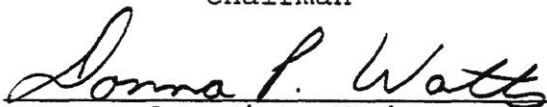
DECISION

The claimant filed a timely appeal of the agency's determination, under Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant is not disqualified under Section 4(c) of the law for the weeks beginning September 3, 1989 and September 10, 1989.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:DW

kbm

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CLAIMANT

UNEMPLOYMENT INSURANCE CUMBERLAND

²Nor would it disqualify the claimant under Section 4(a) of the law.