



**DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383-5032

— DECISION —

STATE OF MARYLAND

HARRY HUGHES  
Governor

KALMAN R. HETTMAN  
Secretary

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 1123-BR-82

DATE: August 23, 1982

APPEAL NO.: 04262

S.S. NO.:

CLAIMANT: Robert G. Goldman

EMPLOYER: Allen's Auto SUPPLY

L. O. NO.: 45

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant was unemployed within the meaning of Section 20(1) of the Law; and whether the Claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) 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 SUPERIOR 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

September 22, 1982

**— 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 Appeals Referee with regard to both Section 4(c) and Section 20(1) of the Maryland Unemployment Insurance Law.

In reviewing the record in this case, the Board has disregarded the Claimant's statement on the Form ESA 221/222. At two separate points during the hearing, the Claimant attempted to explain or qualify the statements he had made which were recorded on that form. Both times, the Claimant was not allowed to complete an explanation by the Appeals Referee. The Appeals Referee then clearly misled the Claimant into believing that his statements on the 221/222 would not be considered as part of the case and that there was no necessity for further explanation. Considering this fact, it was grossly unfair of the Appeals Referee to later use this statement as a basis for one of the crucial findings of fact. The Board concludes that, in these circumstances, it is unfair to use the statement on that form against the Claimant, and the Board has disregarded any statements on the Form 221/222 in rendering this review.

The Claimant was the president of the corporation which ran Allen's Auto Supply Company. This company was destroyed by fire on February 17, 1982. During the week following February 17, 1982 and up until about February 26, 1982, the Claimant spent most of his working hours actively arranging to find a new location for Allen's Auto Supply. This activity was done with the expectation that the insurance money for the claim would be promptly paid.

After a few days, it became apparent that the insurance company was not going to promptly pay the claim. There was a suspicion of arson, and the insurance company had not paid the claim as of the date of the hearing. The Claimant turned this matter over to an attorney.

The Claimant is unable to do anything to get back in business until the insurance company settles. He spent a small amount of time dealing with the affairs of the business, but no substantial period of time has been spent on the affairs of the business since the week ending February 27, 1982. The corporation has no income and pays the Claimant no income for his efforts.

On approximately March 1, 1982, the Claimant began searching for work in the field he was familiar with, that is, auto parts sales. The Claimant is telling prospective employers that he intends to reopen Allen's Auto Supply if and when he ever receives the insurance money. The Claimant, however, has received no indication that the money is forthcoming at any time soon, nor has he received any indication that the money is forthcoming at all.

In the Fourtinakis case, Board Decision No. 870-BH-81, the Board of Appeals clearly stated that the test as to whether a person was unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law was whether or not that

person was performing services for which wages are payable. This Claimant is performing no services for which wages are payable; therefore, he is unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law. This Board ruling has been in effect since October 2, 1981. The Appeals Referee's views of the general purposes of the Unemployment Insurance Law are not relevant in a case such as this where the Board has clearly ruled on what is the meaning of a particular section of the Law.

The Claimant will be disqualified for the two weeks ending on February 27, 1982 under Section 4(c) of the Law. During those two weeks, the Claimant was primarily engaged in activities designed to help get the business back on its feet again. After that date, however, the Claimant had spent a minimal amount of time in these business activities. The Appeals Referee, however, found as a fact that the Claimant visited his accountant and concluded that that fact showed that he was not able, available and actively seeking work. This is ludicrous. The Appeals Referee also finds as a fact that the Claimant spent two hours taking inventory of the shelving of the burnt out building during the week before the hearing. Whatever relevance this does have, there is absolutely nothing in the record to support this finding of fact. The Board recognizes that the Claimant may, on certain days, have spent up to two to three hours on activities generally related to his former business, but the Board is convinced that the great majority of his time was spent actively seeking work.

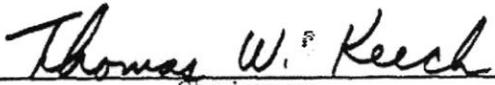
The Appeals Referee, as another reason for disqualifying the Claimant, states that the fact that he is looking for work in the auto repair parts field is a limitation on his availability for work. The record shows, however, that the Appeals Referee made only the most cursory and superficial examination into types of work the Claimant was looking for. Therefore, there is no real basis for making the finding of fact that he was limiting his search for work to the auto repair parts business. In addition, the Claimant was obviously using common sense in applying for jobs in those businesses in which he had experience and in which he was familiar with other employers. The Appeals Referee's decision seems to imply that the Claimant should abandon all his experience in the auto parts field and search for work at which he is totally inexperienced. This is exactly the opposite of the intent and meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Any claimant should obviously look for work in those fields in which he has experience, because these fields are obviously the fields in which he is most likely to obtain employment. The decision of the Appeals Referee with regard to Section 4(c) of the Law, therefore, will be reversed as it affects any week past the week beginning February 28, 1982.

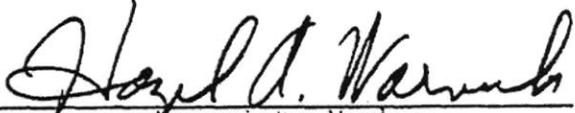
DECISION

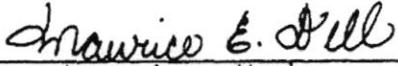
The Claimant was unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law.

The Claimant was able, available and actively seeking work for the week beginning February 28, 1982 and thereafter. He is eligible for benefits thereafter, provided he meets all of the other requirements of the Law.

The decision of the Appeals Referee is reversed.

  
Chairman

  
Associate Member

  
Associate Member

K:W:D  
zvs

COPIES MAILED TO:

CLAIMANT

EMPLOYER

H. David Gann, Esquire  
AZRAEL AND CANN

UNEMPLOYMENT INSURANCE - PIMLICO



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383 - 3040

BOARD OF APPEALS

JOHN J. KENT  
 Chairman

HENRY G. SPECTOR  
 HAZEL A. WARNICK  
 Associate Members

SEVERN E. LANIER  
 Appeals Counsel

GARY SMITH  
 Chief Hearings Officer

- DECISION -

CLAIMANT: Robert G. Goldman  
 EMPLOYER: Allen's Auto Supply  
 ISSUE: Whether the claimant is unemployed within the meaning of Section 20 (1) of the Law.

DATE: April 23, 1982  
 APPEAL NO.: 04262  
 S. S. NO.:  
 L. O. NO.: 45  
 APPELLANT: Claimant

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAYBE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, **ROOM 515**, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 021201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON May 10, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

The claimant is the president of Allen's Auto Supply. The business premises of the firm "Allen's Auto Supply" were destroyed by fire on February 17, 1982. The claimant's claim for damage against the insurance company has not been honored by the insurance company because it suspects that the fire was caused by arson. The claimant filed his initial claim for benefits, effective February 28, 1982 and was assigned a weekly benefit amount of \$136.00. After filing his initial claim for benefits,

the claimant began to look for work as a clerk in an automobile supply store. He has had difficulty in obtaining employment, however, because all of the prospective employers whom he approached knows that it is his intention to open up his business as Allen's Auto Supply as soon as he can effect a settlement with the insurance company and find a suitable business location.

The claimant has been negotiating with the City to avoid the City condemning the property on the grounds that the ruined building of Allen's Auto Supply represents a nuisance.

Prior to the time that the claimant filed his initial claim for benefits, effective February 28, 1982, the claimant was spending about 75 % of his time trying to get his business affairs in order, negotiating with the insurance company and the City and looking for a new location. After filing his claim for benefits, the claimant devoted on the average of two or three hours a week in order to protect the business interest of Allen's Auto Supply.

On or about April 5, 1982, the claimant spent about three hours getting ready for a business conference with his accountant to complete his 1981 tax return and spent two hours with his accountant, these hours were spent on two different days.

During the week prior to the hearing, the claimant spent about two hours at the burned out premises of Allen's Auto Supply taking inventory of the shelving. The claimant was paid a weekly benefit amount of \$136.00 for the week ending April 1, 8, and April 15, 1982.

#### CONCLUSIONS OF LAW

It is concluded from the undisputed evidence that the claimant is not unemployed within the meaning of Section 20 (1) of the Maryland Unemployment Insurance Law. Although the claimant filed his claim for benefits, effective February 28, 1982 and made a search for work as a retail sales clerk in the automobile supply business, he continues to spend several hours each week on behalf of Allen's Auto Supply, the corporation of which he is the president. The claimant's efforts are designed to rehabilitate Allen's Auto Supply as promptly as possible and to get it back in business.

Under these circumstances, the claimant is not unemployed, but is rendering valuable services for the corporation for which he is the president.

The purpose of unemployment insurance is to compensate unemployed workers for their loss wages they are unable to find a suitable job. It was never the intention of the Maryland Unemployment Insurance Law to compensate businessmen for the lost of income they suffer due to the damage that their corporation or their business has suffered.

It is concluded from the evidence that the claimant is not available for work or actively seeking work within the meaning of Section 4 (c) of the Maryland Unemployment Insurance Law. The claimant frankly admitted that he is limiting his search for work as a retail clerk in the automobile supply business, and that he has been unable to find a job because all of the prospective employers to whom he goes in search of work, know that it is his intention to reopen his business as soon as he can get his finance squared away. In these circumstances, the claimant is restricting his availability to temporary employment. In 1953, the Maryland Court of Appeals ruled that a claimant may not impose restrictions upon his willingness to work and still meets the availability requirements of Section 4 (c) of the Law. Robinson v. Employment security Board, 202 Md. 515, 97 A 2d 300.

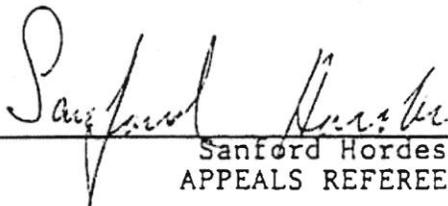
DECISION

The claimant is not unemployed within the meaning of Section 20 (1) of the Maryland Unemployment Insurance Law. Benefits are denied for the week of February 28, 1982 and until such time that the claimant becomes unemployed within the meaning of Section 20 (1) of the Law.

The determination of the Claims Examiner insofar as it disqualified the claimant indefinitely under Section 20 (1) of the Law, is affirmed.

The claimant is not available for work and is not actively seeking work within the meaning of Section 4 (c) of the Law. Benefits are denied for "the week of February 28, 1982 and until such time as the claimant meets the availability requirements of Section 4 (c) of the Law.

The determination of the Claims Examiner is modified accordingly.

  
Sanford Hordes  
APPEALS REFEREE

Date of Hearing - 4/19/82  
cd/7447  
(1522/Wheeler)

COPIES MAILED TO:

Claimant

Employer

Unemployment Insurance - Pimlico