

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

| | | |
|-----------|--------------------|----------------------------------|
| | Decision No.: | 114-BR-89 |
| | Date: | Feb. 9, 1989 |
| Claimant: | Lonnie B. Anderson | Appeal No.: 8811028 & 8811029 |
| | S. S. No.: | |
| Employer: | L. O. No.: | 22 |
| | Appellant: | CLAIMANT |

Issue: Whether the claimant failed, without good cause, to accept available, suitable work within the meaning of Section 6(d) of the law and whether the claimant is 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 MAYBE 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 AT MIDNIGHT ON March 11 , 1989

— 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.

With respect to the penalty imposed in case number 8811028 under Section 6(d) of the law, the Board disagrees with the wording of the Hearing Examiner's decision. 'The claimant could not have failed "to accept available, suitable work," since a finding was made that the job was still open and had never actually been offered to the claimant. Neither can it be said that the claimant failed to apply for suitable work at all. What is true is that the claimant failed to apply for suitable work "when so directed by the Executive Director." [Emphasis supplied In this case, where the claimant was first notified of the job possibility on September 7, 1988, his delay in calling until after September 29, 1988, resulting in his failure to apply formally until October 4, 1988, was a failure to apply for work when so directed to do so. For this reason, the five-week penalty imposed by the Hearing Examiner is appropriate.

With respect to the decision in case no. 8811029, that the claimant is not meeting the requirements of Section 4(c) of the law, the Board disagrees with the reasoning and reverses the decision. The claimant testified that he did not have a car and that there were no nearby bus lines. He did testify, however, that he put in applications for work four to five days per week and that he did have transportation to get back and forth looking for a job until he would be employed and able to afford his own transportation. This transportation was being given rides by friends, hitchhiking, and (apparently) using taxicabs.

These facts make this case fit squarely under the ruling of the Court of Appeals in Employment Security Administration, Board of Appeals v. Smith, 282 Md. 267, 383 A.2d 1108 (1978). In that case, the court ruled that, where the claimant was actively seeking work by all available means, the fact that he did not own an automobile could not be used to disqualify him under Section 4(c) of the basis of unavailability for work.

In this case, the claimant, whose testimony was deemed credible by the Hearing Examiner (and is found credible by the Board of Appeals) was disqualified from benefits solely because he did not live in a town served by the bus line. This ruling is in direct contradiction to the ruling of the Court of Appeals in Smith and must be reversed.

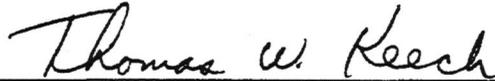
¹ The Board is not establishing any formula for calculating the length of penalty by the delay in applying for the job. The Board simply agrees with the Hearing Examiner that the total facts and circumstances of this case justify a five-week penalty.

DECISION

In case no. 8811028, the claimant failed to apply for suitable work when ordered to do so by the agency, within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning September 4, 1988 and the four weeks immediately following.

In case no. 8811029, the claimant was available for work within the meaning of Section 4(c) of the law. No disqualification is imposed for the period beginning on September 4, 1988 under this section of the law based upon his lack of personal transportation.

The decision of the Hearing Examiner in case no. 8811029 is reversed. The decision of the Hearing Examiner in case no. 8811028 is affirmed, but for the reasons seated above.



Chairman



Associate Member

K:D

kmb

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - BEL AIR

Recoveries - Room .413

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-6048

STATE OF MARYLAND
William Donald Schaefer
Governor

-DECISION-

Date Mailed: November 2, 1988

Claimant: Lonnie B. Anderson

Appeal No.: 8811028 & 8811029

S.S. No.:

Employer:

LO. No.: 22

Appellant: Claimant

Issue: Whether the Claimant failed, without good cause, to accept suitable work when offered to him within the meaning of Section 6(d) of the Law. Whether the Claimant is able, available and actively seeking work within the meaning of Section 4(c) of the Law. Whether the Claimant is overpaid benefits within the meaning of Section 17(d) of the Law.

-NOTICE OF RIGHT OF FURTHER APPEAL -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 518, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON November 17, 1988
NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant

Other: John McDonnell, Job Service Counselor

FINDINGS OF FACT

The claimant has a benefit year effective August 19, 1988. His last employment was with Harford Systems, Inc. of Havre de Grace, MD where he began on August 6, 1987. He was performing duties as a programmer and computer set up at \$5.68 an hour at the time of his separation on August 1, 1988.

The testimony reveals that the claimant indicated to the local office for the week ending September 10, 1988, that he was restricting his eligibility for work due to lack of transportation or transportation problems. The claimant still does not have his own means of transportation, but relies upon hitchhiking, cab and bus service in order to get to job interviews. The claimant also has a friend who takes him to and from places in the event he has an interview or a chance for getting a job.

On September 7, 1988, the claimant was notified by the Job Service of a possible opening with Blair TV in Edgewood, Maryland. This was as a TV repairman, for a forty hour work week at \$6 to \$10 per hour, depending on experience. The local office and Job Service indicated to the claimant that he was to call for an appointment and he was given the number and the person to call. When the local office checked, the claimant had not called for an interview or filled out an application. However, on October 4, 1988, the claimant did go to Blair TV and spoke to the people and filled out an application and had an interview. The job is still open and he is still staying in contact with this employer. The claimant has remained unemployed from August 1, 1988 to the present.

CONCLUSIONS OF LAW

It is concluded from the testimony that the claimant did fail, without good cause, to accept available, suitable work. The local office indicated that he was to call for an appointment and fill out an application on September 7, 1988, and the claimant did not do this until October 4, 1988. Therefore, the minimum disqualification under Section 6(d) of the Law will be imposed, and the determination of the Claims Examiner will be modified accordingly.

The claimant is still having difficulties with transportation and is relying upon hitchhiking and cabs in order to get to work. He is not convincing to this Appeals Referee that he has the proper means of transportation in the event that he would become fully employed and become a member of the general labor force. Therefore, the determination of the Claims Examiner under Section 4(c) of the Law, will be affirmed.

DECISION

The claimant is not able, available and actively seeking work within the meaning of Section 4(c) of the Law. He is disqualified from receiving benefits for the week beginning September 4, 1988 and until he meets the requirements of the Law. The determination of the Claims Examiner under Section 4(c) of the Law is affirmed.

The claimant failed, without good cause, to accept available, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning September 4, 1988 and four weeks (not nine weeks) immediately thereafter. The determination of the Claims Examiner under Section 6(d) of the Law is modified to this extent.


William R. Merriman
Chief Hearing Examiner

Date of Hearing: October 31, 1988
Cassette: 6926
Specialist ID: 22152

Copies Mailed on November 2, 1988 to:
Claimant
Unemployment Insurance - Bel Air (MABS)
Recoveries - Room 413