



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DECISION NO.: 1175-BH-81

DATE: 12/31/81

APPEAL NO.: 19829 & OP-200

S. S. NO.:

CLAIMANT: Gordon F. Gamber

EMPLOYER: Windsor Service Inc.

L. O NO.: 45

APPELLANT: CLAIMANT

ISSUE

Whether the Claimant received benefits while he was disqualified or otherwise ineligible for benefits within the meaning of Section 17(d) of the Law; whether the Claimant has made a false statement or representation knowing it to be false or has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment within the meaning of Section 17(e) of the Law; whether the Claimant was unemployed within the meaning of Section 20(1) of the Law; and whether the Claimant failed, without good cause, to file a timely and valid appeal within the meaning of Section 7(c)(ii) 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

1/30/82

- APPEARANCES -

FOR THE CLAIMANT:

Gordon F. Gamber - Claimant
William Nawrot - Witness

FOR THE EMPLOYER:

Not Represented

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

A non-monetary determination dated July 6, 1981, disqualifying the Claimant from receiving benefits within the meaning of Section 20(1) and Section 17(e) of the Law was mailed to the Claimant. That determination stated that the last date for filing an appeal was July 21, 1981.

The Claimant received that determination on July 21, 1981. The Claimant filed an appeal on July 28, 1981.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the Claimant has successfully rebutted the presumption that the non-monetary determination, if properly mailed, was received soon thereafter. The Claimant not only testified under oath that he did not receive the agency form 221/222 until July 21, 1981, the last day to file an appeal, but he submitted into evidence two written statements of witnesses to the arrival of the notice and the envelope it came in, which, although postmarked July 6, 1981, had irregular markings on it. The Board has also taken notice that such envelopes are not usually postmarked.

Thereafter, the Claimant filed an appeal on July 28, 1981. Considering the fact that the letter was not received until July 21, 1980, the Board finds that the Claimant had good cause for appealing late.

Therefore, the Board finds that the Claimant did not fail to file a timely appeal, without good cause, within the meaning of Section 7(c)(ii) of the Law.

Based on the testimony taken on the merits before the Board of Appeals, and the record below, the Board is hereby remanding this case to the Appeals Referee for a new hearing and decision on the merits on the following issues:

(1) Section 17(e). The record is devoid of evidence concerning the Claimant's alleged false statement or representation. The Appeals Referee is instructed to take testimony and evidence on this issue from the agency and the Claimant.

(2) Section 4(c). Evidence developed at the hearing before the Board indicates that there is a question regarding whether the Claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Law. However, since the Claimant was not given prior notice of this issue, the Board is instructing the Appeals Referee to give notice to the Claimant and to make findings regarding Section 4(c) of the Law.

(3) Section 20(1). The Appeals Referee should make findings of fact and conclusions of law pursuant to the principles enunciated by the Board of Appeals in its recent decisions. See, Yetta L. Baker, Decision No. 1034-BH-81; Marie Gleason, Decision No. 1033-BH-81; and John Fisher, Decision No. 1043-BH-81.

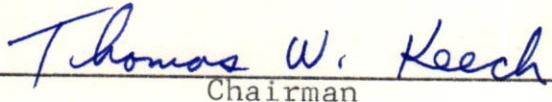
DECISION

The Claimant did not fail to file a timely appeal without good cause, within the meaning of Section 7(c)(ii) of the Law.

The decision of the Appeals Referee is reversed.

This case is hereby remanded to the Appeals Referee for a decision in compliance with this decision of the Board of Appeals.


Associate Member


Chairman

dh
K:W

DATE OF HEARING: December 1, 1981

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John G. Hennegan - Appeals Referee

UNEMPLOYMENT INSURANCE - PIMLICO



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 Associate Members

- DECISION -

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

CLAIMANT: Gordon F. Gamber
 DATE: September 8, 1981
 APPEAL NO.: 19829 & OP-200
 S. S. NO.:
 EMPLOYER: Windsor Service Inc.
 L. O. NO.: 45
 APPELLANT: Claimant

ISSUE: Whether the claimant has made a false statement or representation knowing to be false or have knowingly failed to disclose a material fact to obtain or increase any benefit or other payment within the meaning of Section 17(e) of the Law. Whether the claimant was unemployed within the meaning of Section 20(1) of the Law. Whether the claimant filed a timely and valid appeal within the meaning of Section 7(e) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON September 23, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Gordon F. Gamber, Present
 Bill Bowman,
 William Nawrot

FOR THE EMPLOYER:

Mr. Steve Balad,
 Accountant

FINDINGS OF FACT

The claimant was denied benefits by the Claims Examiner on the grounds that he was not unemployed within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law and that he has made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to obtain or increase any benefits or other payment within the meaning of Section 17(e) of the Maryland Unemployment Insurance

Law. A notification of these disqualifications were mailed to the claimant at his address of record on July 6, 1981. These notices informed the claimant that he had until July 21, 1981 within which to file an appeal. The claimant signified his intention of filing an appeal by a request for appeals cards dated July 28, 1981.

There was no error on the part of the Employment Security Administration in the matter of proper notice to the claimant of the disqualifications in question.

COMMENTS

The Maryland Unemployment Insurance Law, Section 7(e) provides that:

"The claimant or any other party entitled to notice of a determination as herein provided, may file an appeal from such determination with the Board of Appeals within 15 days after the date of mailing of the notice to his last known address or if such notice is not mailed within 15 days after the date of delivery of such notice."

The provisions of the Statute are mandatory and makes no allowances for exceptions. Since the claimant failed to file a timely appeal, the Appeals Referee is without jurisdiction to rule on the merits of the case. The determination of the Claims Examiner shall therefore not be disturbed.

DECISION

The claimant filed an untimely appeal.

The determination of the Claims Examiner that the claimant was not unemployed within the meaning of the Maryland Unemployment Insurance Law stands. The disqualification from February 24, 1980 until no longer self employed remains in effect.

The Claims Examiner's determination that the claimant made a false statement or representation knowing it be false or to have knowingly failed to disclose a material fact to obtain or

increase any benefit or other payment within the meaning of the Maryland Unemployment Insurance Law stands. The disqualification from July 6, 1981 to July 5, 1982 remains in effect.

The determinations of the Claims Examiner are affirmed.


John G. Hennehan
APPEALS REFEREE

Note: This decision does not preclude
The Employment Security Administration from
instituting civil or criminal actions against
the claimant under provisions of Section 17
of the Maryland Unemployment Insurance Law.

Date of hearing: August 28, 1981

Cassette: 9018

hf (A. Hampton)

COPIES MAILED TO:

Claimant
Employer
Unemployment Insurance-Pimlico

Carl Rivas/ Recovery