

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	14 -BH-91
	Date:	January 3, 1991
Claimant: Frances Wingate	Appeal No.:	9010044
	S. S. No.:	
Employer: City of Annapolis c/o Unemployment Tax Service	L. O. No.:	8
	Appellant:	EMPLOYER

Issue:

Whether the claimant had a contract or reasonable assurance of returning to work under Section 4(f)(4) 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

February 2, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

James Stuller, UTS;
Darlene Bluford,
Personnel Assistant

EVALUATION OF EVIDENCE

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 in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant has been employed as a crossing guard for the City of Annapolis Police for over four years. Each year she works during the period that schools are in session, and then she is off during the summer. Although on a few rare occasions a crossing guard may be asked to work during the summer, it is not part of their regular employment. This claimant has not worked during any of the summers.

Her last day of work for the 1989-90 school year was June 13, 1990. The claimant was given reasonable assurance that she would be returning to her job in September at the start of the new school year, and in fact she did so. The work that the claimant performs under the employ of the City of Annapolis Police is on behalf of the City of Annapolis school system.

CONCLUSIONS OF LAW

The Board concludes that the claimant had reasonable assurance of returning to her job in the fall of 1990, at the start of the school year. Further, the Board concludes that the claimant was performing this service for a governmental entity, namely the City of Annapolis Police Department, on behalf of an educational institution, the school system of Annapolis, within the meaning of Section 4(f)(4) of the law.

Under Section 4(f)(4):

An individual may not be paid benefits based on covered service performed in any capacity other than an instructional, research, or principal administrative capacity for . . . a governmental entity on behalf of an educational institution for any week of unemployment that begins after December 31, 1977, during a period between two successive academic years or terms, if the individual performs the service in the first year or term and there is a reasonable assurance that the individual will perform the service in the second year or term.

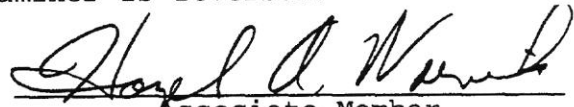
Since the claimant clearly meets the requirements of this section, she may not be paid benefits based on her service with the Annapolis City Police Department for the summer of 1990. The Board notes that the issue of whether the City of Annapolis is an educational service agency within the meaning of Section 4(f)(6) is not the relevant issue in this case.

The decision of the Hearing Examiner is reversed.


DECISION

The claimant was employed in a capacity other than instructional, research, or principal administrative for a governmental entity on behalf of an educational institution. The unemployment commenced between two successive academic years or terms and there was reasonable assurance that she would return to her employment in the second year or term. Benefits based on earnings with the City of Annapolis are denied under Section 4(f)(4) of the Maryland Unemployment Insurance Law from the week beginning June 10, 1990 and until the claimant no longer has reasonable assurance.

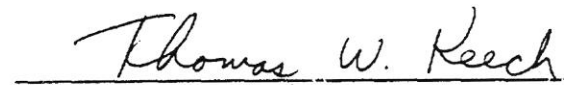
The decision of the Hearing Examiner is reversed.



Associate Member



Associate Member



Chairman

HW:W:K

kbm

Date of Hearing: December 11, 1990

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ANNAPOLIS

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Date: Mailed: 8/27/90
Claimant: Frances M. Wingate Appeal No.: 9010044
S. S. No.:
Employer: City of Annapolis LO. No.: 008
Appellant: Claimant
Issue: Whether the claimant had a contract or reasonable assurance of returning to work under Section 4(f)4 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

September 11, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

James Stullez,
Unemployment Tax
Service, Inc.

Other: Nikki Gladding,
Unemployment Insurance
Supervisor

FINDINGS OF FACT

The record demonstrates that the claimant began employment approximately four and a half year ago and performed duties for the Annapolis City Police as a crossing guard. The claimant last performed such services on June 13, 1990.

The record shows that the claimant was customarily subjected to layoff during the summer months when school is not in session. However, the record also shows that in some previous years the claimant and other similar employees were assigned weekend crossing duties in downtown Annapolis. This was not the case during 1990, however.

A benefit determination was made in which the claimant was disqualified under the terms of Section 4(f)(4) of the Maryland Unemployment Insurance Law, providing that she "was employed in a capacity other than instructional research or principal administrative in a educational institution."

The claimant has received notice of her intention to return her to employment for the 1990-1991 academic year (see employer's exhibit #1).

CONCLUSIONS OF LAW

Section 4(f)(4) specifically exempts from eligibility persons who perform services for an educational establishment "in any capacity other than instructional research or principal administrative." And there is some exemption for a "educational service agency" under Section 4(f)(6). That Section provides that "for the purposes for this paragraph "educational service agency" means a governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institution.

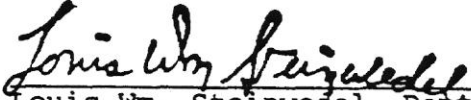
In the instant case, the claimant works for the Annapolis City Police, an establishment which cannot be claimed to be established and operated exclusively for the purpose of providing crossing service to school system. Clearly, the police department provides other services for both the public and other governmental agencies.

The Board of Appeals held in Fisher v. Baltimore County Office of Personnel that school crossing guards employed by the Baltimore County Police Department and not the Board of Education are eligible for unemployment insurance benefits and not subject to the provisions of Section 4(f)(4).

DECISION

It is held that the claimant is eligible for receipt of unemployment insurance benefits, within the meaning of Section 4(f)(4) of the Maryland Unemployment Insurance Law. The claimant is eligible for the receipt for benefit, provided that she otherwise in compliance with the requirements of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner is reversed.


Louis Wm. Steinwedel, Deputy
Hearing Examiner

Date of Hearing: 8/14/90
ps/Specialist ID: 08006
Cassette No: 5870
Copies mailed on 8/27/90 to:

Claimant
Employer
Unemployment Insurance - Annapolis (MABS)