



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

**STATE OF MARYLAND
HARRY HUGHES
Governor**

BOARD OF APPEALS

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**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Decision No.: 814-BH-84

Date: October 18, 1984

Appeal No.: OP-50

S. S. No.:

Claimant: Jeffrey Ruttenberg

L.O. No.: 45

Employer: Midwest Corn System

Appellant: AGENCY

Issue: Whether the claimant has made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact to obtain or increase any benefit or other payment within the meaning of §17(e) of the Law; and whether the claimant has received benefits for which he was ineligible because he was not unemployed within the meaning of §17(d) 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 A ATTORNEY IN THE CIRCUIT 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 ON November 17, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Jeff Ruttenberg
Marceau Edouard, Student Atty.
Clinton Bamberger, Attorney

FOR THE EMPLOYER:

Department of Employment & Training
John Roberts, Legal Counsel

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 Employment and Training's documents in the appeal file.

It is uncontested that the claimant filed claims for unemployment insurance benefits for the week ending January 29, 1983 and the seven successive weeks ending with the week ending March 19, 1983. The claimant received \$140 for each of these eight weeks. On each of the claim cards filed for benefits during these weeks, the claimant indicated that he was not working during these weeks. Actually, the claimant was working for an employer named Midwest Corn Systems, Inc. from January 24, 1983 until March 4, 1983. He earned \$230.77 for each of these five weeks. In addition, he earned a bonus of \$500 which was collected sometime during this period. For the week beginning March 6, 1983, the claimant was employed by Gates Acoustinet, Inc. He earned \$458.40 for that week. During the following week, which ended on March 19, 1983, the claimant earned \$366.46 for the same company.

Since the claimant's earnings for each of these weeks were far in excess of his weekly benefit amount, there is no question but that the claimant was overpaid benefits within the meaning of §17(d) of the law for these eight weeks. The claimant admits that he was overpaid benefits within the meaning of §17(d) of the law, but he denies vehemently that he knowingly made a false statement or made an omission of a material fact in order to obtain or increase benefits within the meaning of §17(e) of the law.

Evaluation of the claimant's contention requires a finding as to his subjective intent at the time when he filed the claims for benefits during this period. Section 17(e) requires that a claimant "knowingly" either make a false statement or omit a material fact with the purpose of obtaining benefits or obtaining an increase in benefits. The claimant's sole contention is that the false statements he made (that he did not work during any of the weeks in question) and omissions that he made (of the fact that he had earnings in each of the weeks) were made innocently and without any knowing intent.

The claimant's contention is that, when he began work for Midwest Com, he called the local office of the unemployment insurance administration and was advised that he need not report his earnings or cease filing claims until he had actually received

wages. Within two weeks, the claimant did receive wages, but he did not report them immediately because he was engaged with a dispute over his employer about the amount of wages. Within another week, this dispute was resolved. The claimant then received a regular, undisputed paycheck on at least two occasions, covering four weeks of work. The claimant has no explanation as to why he did not report that he was working even after he had been employed for a number of weeks and was being regularly paid. (In addition, the claimant was paid a \$500 bonus during this period.)

Even, if the claimant's testimony is to be credited that he was advised by the local office that he was still eligible for benefits up until the time he actually received a paycheck (a fact which the Board seriously doubts), the claimant should have reported his earnings in the third, fourth and fifth weeks of employment with Midwest Corn, even under his own misinterpretation of the law. The claimant's absolute inability to give any rational explanation as to why he continued to file for benefits and claim that he was not working after he was both working and receiving paychecks leads the Board to believe that his falsification of the claim cards was done deliberately and knowingly and for the intent of obtaining benefits.

FINDINGS OF FACT

The claimant applied for and collected unemployment insurance benefits in the amount of \$140 a week for the eight weeks beginning with the week ending January 29, 1983 and ending with the week ending March 19, 1983. On each of the eight claim cards, the claimant indicated that he was not working. For none of the weeks listed did the claimant inform the agency of the amount of money that he was making by working during those weeks. In reality, the claimant earned \$230.77 for each of the first six weeks of this period. He earned \$458.40 in the seventh week, and \$366.46 in the eighth week.

With regard to at least the weeks ending February 12, 1983, February 19, 1983, February 26, 1983, and March 5, 1983, the claimant knowingly made false statements on the claim cards and also omitted the material fact of the amount of his wages in order to obtain benefits to which, he was not entitled under the Unemployment Insurance Law.

CONCLUSIONS OF LAW

The claimant was not unemployed within the meaning of §20(1) of the Maryland Unemployment Insurance Law for the eight weeks beginning with the week ending January 29, 1983, because he had earnings in excess of his weekly benefit amount for each of these weeks. The claimant is overpaid \$1,120, which must be repaid under §17(d) of the Maryland Unemployment Insurance Law.

Since the claimant knowingly made false statements and omitted material facts in order to obtain benefits to which he was not entitled, the claimant should also be penalized under §17(e) of the law.

DECISION

The claimant received unemployment insurance benefits to which he was not entitled for the claim weeks ending January 29, 1983, February 5, 1983, February 12, 1983, February 19, 1983, February 26, 1983, March 5, 1983, March 12, 1983, and March 19, 1983. The \$140 received for each of these weeks must be repaid pursuant to the provisions of §17(d) of the Maryland Unemployment Insurance Law. The decision of the Appeals Referee with regard to §17(d) of the law is affirmed.

The claimant knowingly made false statements and failed to disclose the material facts in order, to receive unemployment insurance benefits to which he was not entitled within the meaning of §17(e) of the law. He is disqualified from the receipt of benefits from January 12, 1984 until January 11, 1985. The decision of the Appeals Referee on §17(e) of the law is reversed.

Thomas W. Keech
Chairman

Hayel A. Weirich
Associate Member

Maurice E. Bill
Associate Member

K:W:D

kbm

Date of Hearing: October 9, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Clinton Bamberger, Attorney
Legal Services Clinic

Marceau Edouard, Student Attorney
Legal Services Clinic

Gates Accoustinet

John Roberts - Legal Counsel

M. C. Ashley - U. I. Director

UNEMPLOYMENT INSURANCE - PIMLICO



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
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DIVISION OF APPEALS
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 MARK R. WOLF
 Administrative
 Hearings Examiner

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

- DECISION -

CLAIMANT: Jeff E. Ruttenberg
 EMPLOYER: Midwest Com. System
 and
 Gates Acoustinet
 DATE: March 21, 1984
 APPEAL NO.: OP-50
 S. S. NO.:
 L. O. NO.: 45
 APPELLANT: Claimant

ISSUE: Whether the claimant has made a false statement or representative knowing it to 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 Section 17(e) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON April 5, 1984

-APPEARANCES -

FOR THE CLAIMANT:

Jeff E. Ruttenberg - Claimant

FOR THE EMPLOYER:

Midwest Com. System - Not
 Represented and Gates
 Acoustinet - Not
 Represented

Other: Grace Saulsbury - Claims
 Investigator - Department of
 Employment and Training

EVALUATION OF THE EVIDENCE

The claimant alleged that when he filed his claims for unemployment insurance benefits, that he was informed by a claims representative that he should not report wages to the State of Maryland until he received those benefits from that company.

Moreover, the claimant alleged that on the first job at Midwest Com. System, the claimant had a dispute with his employer over his salary; the claimant contacted the local unemployment office and was advised not to report the wages until the dispute was settled. The claimant alleged when he received his checks from the Midwest Com. System and Gates Acoustinet, that he stopped sending claim cards in the mail. Furthermore, the claimant alleged that he questioned the claims representative about his submitting his claim cards, and if they were submitted in a correct fashion; the claimant was informed by a claims representative that he was submitting claim cards in an accurate manner.

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits, effective May 16, 1982. The claimant's weekly benefit was determined to be \$140.00 a week. The claimant had been employed by Midwest Com. System from January 24, 1983 to March 5, 1983. The claimant was employed as a sales manager. The claimant was paid \$25,000.00 per year. The claimant was paid approximately \$900.00 hi-weekly. The claimant did not report his wages that he had with Midwest Com. System to the Department of Employment and Training because he was under the understanding that those wages should not be reported until he received the money from his employer. After the first paycheck from Midwest Com. system, there was a dispute with his paycheck. The claimant questioned the Local Office with regards to submitting wages for that period of time. The claimant was informed by a claims representative that he should not submit the wages from Midwest Com. system until the dispute with his employer had been Settled

The claimant began employment at Gates Acoustinet beginning March 6, 1983. The claimant did not report any wages from Gates Acoustinet to the Department of Employment and Training because he was informed by a claims representative not to submit any wages until he received his salary from Gates Acoustinet. After the claimant began to receive money from Gates Acoustinet, he no longer submitted claim cards to the Department of Employment and Training.

The Department of Employment and Training's records reveal that for the claim weeks ending January 29, 1983, February 5, 1983, February 12, 1983, February 19, 1983, February 26, 1983 and March 5, 1983, the claimant reported that he had received no earnings from Midwest Com. System. However, Midwest Com. System

reported to the Department of Employment-and Training that the claimant had earnings in the amount of \$230.70 for the claim weeks ending January 25, 1983, February 5, 1983, February 12, 1983, February 19, 1983, February 26, 1983 and March 5, 1983. The claimant failed to submit wages that he had at Midwest Com. System to the Department of Employment and Training because he was under some understanding from a claims representative at the Pimlico Local Office that the wages should not be reported until they were actually received; furthermore, the claimant had a dispute with Midwest Com. System with regards to a paycheck and was further informed by a claims official that the wages should not be reported until the dispute was settled.

The Department of Employment and Training's records reveal that for the claim weeks ending March 12 and March 19, 1983, the claimant reported he had received no earnings from Gates Acoustinet. However, Gates Acoustinet reported to the Department of Employment and Training that the claimant had earnings in the amount of \$458.40 for the claim week ending March 12, 1983 and \$366.46 for the claim week ending March 19, 1983. The claimant did not report any wages that he had from Gates Acoustinet because he was under some understanding from a claims representative at the Pimlico Local Office that wages are not to be reported until actually received by the claimant.

CONCLUSIONS OF LAW

The claimant failed to report wages from Midwest Com. System and Gates Acoustinet because he was under an understanding from a claims representative at the Pimlico Local Office that wages are not to be reported until they were actually received by the claimant. Further, the claimant had a dispute with his employer at Midwest Com. System and was informed by a claims representative not to report wages from Midwest Com. System until the dispute with his paycheck had been settled. Since the claimant was under some understanding that wages are not to be reported until actually received until a pay dispute was settled, it will be held that the claimant did not have the intent to knowingly fail to disclose a material fact to obtain benefits within the confines of Section 17(e) of the Maryland Unemployment Insurance Law. However, since the claimant did receive unemployment insurance benefits for the claim weeks ending January 29, 1983

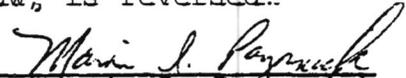
through and including March 19, 1983, and during this period of time did receive unemployment insurance checks in the amount of \$140.00 for the above eight weeks mentioned, that these unemployment insurance benefits must be recovered within the meaning of Section 17(d) of the Law. Therefore, the determination of the Claims Examiner that the claimant knowingly failed to disclose a material fact to receive benefits to which he was not entitled within the meaning of Section 17(e) of the Law will be reversed.

DECISION

It is held that the claimant received unemployment insurance benefits to which he was not entitled for the claim weeks ending January 29, 1983, February 5, 1983, February 12, 1983, February 19, 1983, February 26, 1983, March 5, 1983, March 12, 1983 and March 19, 1983 in the amount of \$140.00 for each week, which must be repaid within the meaning of Section 17(d) of the Maryland Unemployment Insurance Law.

The disqualification imposed by the Claims Examiner from January 12, 1984 to January 11, 1985 is rescinded.

The determination of the Claims Examiner that the claimant knowingly failed to disclose a material fact in order to receive unemployment insurance benefits to which he was not entitled within the meaning of Section 17(e) of the Law, is reversed..


 Marvin I. Pazornick
 Appeals Referee

Date of hearing: 3/13/84
 amp/1784
 (?)

1809-B, 1813-A
 Copies mailed to:

Claimant

Midwest Com. System (Employer)

Gates Acoustinet (Employer)

Unemployment insurance - Pimlico

Donna Gross - Room 414
 Recoveries - Room 411