



STATE OF MARYLAND
 HARRY HUGHES
 Governor

RUTH MASSINGA
 Secretary

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
 1100 North Eutaw Street
 Baltimore, Maryland 21201
 Telephone: 383-5032

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 HAZEL A. WARNICK
 MAURICE E. DILL
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel

—DECISION—

	DECISION NO.:	833-BH-83
	DATE:	July 8, 1983
CLAIMANT: John W. George	APPEAL NO.:	02720
	S.S.NO.:	
EMPLOYER:	L.O. NO.:	40
	APPELLANT:	CLAIMANT

ISSUE Whether the Claimant failed, without good cause, to file a timely and valid appeal within the meaning of §7(c) (ii) of the Law; and whether the Claimant was able to work, available for work and actively seeking work within the meaning of §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 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 August 7, 1983

— APPEARANCE —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

John W. George - Claimant	
Ernie Grecco - Assistant To President	
	Baltimore Council of AFL-CIO Unions
Tom Calloway - Organizer, Local 194	
Charles Marshall - Training Director	

EMPLOYMENT SECURITY ADMINISTRATION
 Mr. John Roberts - Legal Counsel

INTRODUCTION

The agency's counsel raised at the hearing the issue of whether the former employer of the Claimant had a right to be notified of the hearing in this case. The Board notes that §7(d) of the Law requires that the last employing unit of a person be given notice of an Executive Director's determination under §4(c) of the Law unless the Executive Director dispenses with the giving of such notice for the reasons listed. Since a determination in this case was not sent to the last employing unit of the Claimant by the Executive Director, the Board of Appeals will assume that the Executive Director dispensed with the giving of such notice for a reason listed in the statute. In making this assumption, the agency's actions will be presumed to be in conformity with the law until the contrary is shown.

EVALUATION OF THE 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 Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant first applied for benefits on February 23, 1981. While unemployed, he applied for training at a training seminar held by his union. He was accepted for this six week program which began on January 10, 1982 and ended on February 28, 1983. This program conducted classes Monday through Friday from 7:30 a.m. until 3:30 p.m. The classes were conducted in Sykesville, Maryland. The Claimant was required to arrive at the union office downtown in order to get transportation to Sykesville. Each and every day that he stopped in the union office, the Claimant checked with the dispatcher (who had complete control over the only list of jobs available for union members) and asked if there were any jobs for him. At no time during the six week training program were any jobs available from this list for the Claimant. Had jobs been available, the Claimant would have left the training program in order to apply for these jobs.

Although the Claimant was not allowed by his union rules to seek laboring work in any way other than by this list, the Claimant was allowed to seek other types of work on his own. The Claimant, in fact, did seek other types of work on his own, making three personal contacts for work during each week of his training program. These personal contacts were made after 3:30 p.m., when the Claimant had returned from the training.

The training program itself never did apply to the Executive Director for the exemption listed in §4(c) of the Law. Consequently, the Executive Director never did exempt its trainees from the other requirements of §4(c) of the Law.

On February 3, 1983, the Executive Director disqualified the Claimant from receiving unemployment insurance benefits based on his failure to meet the requirements of §4(c) of the Law. This determination actually reached the Claimant on February 22, 1983. The last day to appeal the decision was February 23, 1983. Although an appeal could be filed in person, the Claimant, who has a learning disability and cannot read well, decided that he must visit the local office in order to find out the meaning of this determination. The Claimant, however, had already missed two days of the training program by this time, one day because of a death in the family and another day in order to report to Employment Security Administration on another occasion. Had the Claimant missed an additional day of training, he would have been terminated from the training program. Therefore, the Claimant waited until his training program was complete before he visited the local office to file his appeal on March 2, 1983.

CONCLUSIONS OF LAW

The Board concludes that the Claimant did have good cause for filing a late appeal within the meaning of §7(c) (ii) of the Maryland Unemployment Insurance Law. The Claimant, who was attempting to help himself by completing a training program, and who could not read and understand the determination sent to him by the agency, acted reasonably in visiting the agency as soon as his training program was over. The Board concludes that this was good cause, especially where the Claimant would have been expelled from the training program for missing an additional day.

Concerning the merits of the case, the Board can see no reason why the Claimant should be disqualified under §4(c) of the Law. The Claimant was clearly available for work at all hours of the day and night. He was attempting to upgrade his skill by attending a union sponsored training program. In addition, he was making three personal contacts per week in search of work unrelated to his union work. He also checked daily with his union dispatcher to see if there was any union work for him to perform. The Claimant clearly met all of the requirements of §4(c) of the Law, even though he was attending this training program.

DECISION

The Claimant had good cause within the meaning of §7(c) (ii) of the Maryland Unemployment Insurance Law for failing to file a timely appeal of the determination dated February 3, 1983.

The Claimant was able to work and available for work within the meaning of §4(c) of the Maryland Unemployment Insurance Law for the week ending January 8, 1983 up to and until the week ending March 5, 1983. No disqualification under §4(c) of the Law is imposed for this period.

The decision of the Appeals Referee is reversed.

Thomas W. Keech
Chairman

Harold A. Warrick
Associate Member

Maurice E. Gill
Associate Member

K:W:D

ZS

DATE OF HEARING: June 28, 1983.

COPIES MAILED TO:

CLAIMANT

Ernie Grecco. Asst. to President

Charles R. Marshall
Laborers District Council Training
Fund of Baltimore and Vicinity

John Roberts - Legal Counsel, Room 606

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

- DECISION -

MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

MARK R. WOLF
 Administrative
 Hearings Examiner

DATE: April 12, 1983

APPEAL NO.: 02720

S. S. NO.:

L. O. NO.: 40

APPELLANT: Claimant

CLAIMANT: John W. George

EMPLOYER:

ISSUE: Whether the claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Law.
 Whether the appealing party filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c) (ii) 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 April 27, 1983

- APPEARANCES -

FOR THE CLAIMANT:

John W. George - Claimant

FOR THE EMPLOYER:

OTHER: EMPLOYMENT SECURITY ADMINISTRATION
 Joseph Manz - Claims Supervisor I

FINDINGS OF FACT

Notice of the Claims Examiner's determination was mailed to the claimant at his address of record on February 3, 1983, informing him that he had been denied benefits on the ground that he was not able, available and actively seeking full-time work within the meaning of Section 4(c) of the Maryland Unemployment

Insurance Law. This determination states on its face that an appeal could be filed within fifteen days after the date thereof, either in person or by writing to the local claim office where claims are filed, and that February 23, 1983 was the last date to file an appeal.

The claimant filed his appeal in writing on March 2, 1983, indicating that he did receive the determination the day before the last date to file an appeal but had a funeral to attend. He gave no explanation, however, for filing the appeal eight days after the last date to file an appeal.

The merits of the case indicated that the claimant was attending the Laborers Trust Fund Training Center of Sykesville, Maryland from January 7, 1983 to February 28, 1983, Monday through Friday, from 7:30 a.m. to 3:30 p.m. He was not actively seeking work during that period of time. The school ended on February 28, 1983 and the claimant is now seeking work.

CONCLUSIONS OF LAW

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

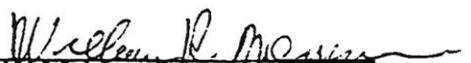
"A determination shall be deemed final unless a party entitled to notice thereof files an appeal within 15 days after the notice was mailed to his last known address, or otherwise delivered to him; provided, that such period may be extended by the Board of Appeals for good cause."

Since the claimant did not show good cause for filing an untimely appeal, the Appeals Referee is without jurisdiction to consider the merits of the case. Even if the claimant had filed a timely appeal, it would have been concluded from the merits of the case that the claimant was not able, available and actively seeking work from January 7, 1983 to February 28, 1983.

DECISION

The claimant failed to file a timely appeal within the meaning of Section 7(c) (ii) of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner that the claimant was not able, available and actively seeking full-time work within the meaning of Section 4(c) of the Law, stands. The denial of benefits from the week beginning January 2, 1983 and until he meets the requirements of the Law, remains unchanged.



William R. Merriman
APPEALS REFEREE
W. R. Merriman

DATE OF HEARING: March 29, 1983

ras

(1319 -- Kelly-Godsey)

copies mailed to:

Claimant

Unemployment Insurance - Eastpoint