



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 CALMAN R. HETTLEMAN

**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

CLAIMANT: G. W. Cronhardt

DECISION NO.: 854-BH-81

DATE: 9-10-81

APPEAL NO.: OP-4723

S. S. NO:

EMPLOYER: Venture Vending

LO NO.: 1

APPELLANT: REMAND FROM COURT
 REOPENED CASE
 CLAIMANT APPEAL

ISSUE: Whether the Claimant 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.

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

October 10, 1981

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

C.W. Cronhardt - Claimant
 Tom McCarty - Attorney

EMPLOYMENT SECURITY ADMINISTRATION
 John Zen - Legal Counsel
 Virginia Masucci - Agency Representative
 Jan Fitzgerald - Agency Representative
 John Miller - Agency Representative

DECISION ON REMAND

This case having been ordered remanded to the Board of Appeals by the Superior Court of Baltimore City on February 4, 1981, the Board of Appeals hereby makes the following determinations:

FINDINGS OF FACT

A. Appellant was entitled to the following benefits from January 14, 1979 up to and including January 24, 1981:

January 14, 1979 to July 14, 1979 - 17 weeks at \$106.00 per week for a total of \$1802.00.

This represents what he would have been entitled to absent any determination of fraud.

July 15, 1979 to December 31, 1979 - 0

When the Appellant re-applied for benefits on December 9, 1979, after he quit his job at Allegheny Pepsi Cola Bottling Company, he was found ineligible, since he had exhausted his twenty-six weeks-of benefits for that year.

January 1, 1980 to January 24, 1981 - 0

When the Appellant again applied for benefits on January 14, 1980, he was disqualified until he became re-employed and earned ten times his weekly benefit amount. due to his having voluntarily quit his job with Allegheny Pepsi Cola Company, without good cause.

The Claimant obtained employment with another company on February 18, 1980.

B. Appellant received 26 weeks of benefits, at \$106.00 per week, for a total of \$2,756.00.

c. Appellant received 26 weeks of benefits, as follows (the Board's findings are based on when the Appellant's checks were mailed to him; the Appellant could not provide the dates he actually received any of his benefits):

<u>For Weeks Ending</u>	<u>Dates Mailed</u>
1/20/79	2/9/79
1/27/79	2/9/79
2/3/79	2/16/79
2/10/79	2/21/79
2/17/79	3/2/79
2/24/79	3/13/79
3)3/79	3)12)79
3/10/79	3/21/79
3/17/79	3/23/79
3/24/79	3/28/79
3/31/79	4/4/79
4/7/79	4/10/79
4/14/79	4/27/79
4/21/79	4/27/79
4/28/79	5/4/79
5/5/79	5/9/79
5/12/79	5/17/79
5/19/79	5/20/79

5/26/79
6/2/79
6/9/79
6/16/79
6/23/79
6/30/79
7/7/79
7/14/79

5/29/79
6/5/79
6/11/79
6/18/79
6/25/79
7/6/79
7/11/79
7/17/79

D. The Board finds that the Appellant was not misled to his detriment by any agency personnel.

Although the Appellant received several of his checks late, he received the majority of his checks regularly and in a timely fashion.

The Appellant, being dissatisfied with the way he was receiving his checks, made numerous inquiries to the agency and was finally advised in person as to the proper way to fill out his claim cards. He was then told that he should continue filing his cards in that manner until his claim expired.

The Appellant was not told to fill out the cards incorrectly or dishonestly. He was not told that he should continue to check the box that he was not working, even if he obtained employment.

Further, not only do the claim cards specifically ask the Claimant if he is now working and if so, to give the name of the company, his earnings, etc.; but on the back of the checks that the Appellant received there is a certification statement, that must be signed by the endorser of the check, to the effect that the Claimant performed no services for which earnings are paid or payable, and that to present the check for payment otherwise is a criminal offense. He was aware of this language on the checks .

CONCLUSIONS OF LAW

E. Upon consideration of all the circumstances of this case, including the testimony of all the witnesses, documentary evidence introduced by the Appellant and the Employment Security Administration, and the arguments of both sides, the Board of Appeals finds that the fraud disqualification under Section 17(e) of the Maryland Unemployment Insurance Law was proper.

The Appellant was not misled by any agency personnel and, in fact, he had ample notice that he was required to re-perk to the agency that he was working and had earnings.

Obviously, the agency employee was merely informing him that if he continued to fill out his cards in a correct manner, he should have no problems and therefore would be able to receive his benefits, until his claim ran out. The subject of possible disqualification prior to the expiration of his claim never came up. To interpret the instructions of the agency' employee in any other manner would place an impossible burden on agency personnel whenever they discussed any aspect of unemployment benefits with any claimant or potential claimant.

Further, the Board does not find that the receipt of his checks was so sporadic as to confuse the Claimant into thinking that the checks he were receiving while working were for back payments .

The Board also notes that it is not required to find that fraud was proven beyond a reasonable doubt, in order to find the Appellant disqualified under Section 17(e) of the Law.

F. The repayment order was proper.

The decision of the Appeals Referee is affirmed.

Thomas W. Keed

Chairman

Loel A. Wainil

Associate Member

K:w
raf

DATE OF HEARING: August 17, 1981

COPIES MAILED TO:

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EMPLOYER

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UNEMPLOYMENT INSURANCE - BALTIMORE