

 **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.:	899-BH-89
	Date:	October 19, 1989
Claimant: Melrone McCray	Appeal No.:	8810937
	S. S. No.:	
Employer:	L O. No.:	9
	Appellant:	AGENCY

Issue: Whether the claimant 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 Section 17(e) of the law; whether the claimant was actively seeking work within the meaning of Section 4(c) of the law; and whether the claimant is overpaid benefits within the meaning of Section 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 MAYBE 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.

November 18, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present for hearing on August 15, 1989:

Melrone McCray, Claimant
For the Dept. of Economic & Employment Development:
John McGucken, Legal Counsel
Angie Burkhardt, Quality Control Supvr.
Linda Althoff, Quality Control Investigator

Present for hearing on September 19, 1989:

Melrone McCray
Linda Althoff
John McGucken

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.

The Board allowed the claimant additional time in order to submit documentary evidence in the form of newspaper advertisements. These advertisements, however, fell far short of proving the claimant's point; and, in many respects, they reinforced the agency's case.

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits for the week ending August 6, 1988. On his claim for that week, the claimant stated that he had applied for employment at the Computer Science Corporation, located in Silver Spring, Maryland, and Kamber Engineering, Inc., in Gaithersburg, Maryland. The claimant listed on his claim card, and he also reiterated in a later interview with the agency, that he visited each of these places in person and left an application. Based on all of the evidence, the Board finds as a fact that the claimant's statement with respect to applying for work at Kamber Engineering was false and was deliberately falsely made. This statement was made in order to obtain unemployment insurance benefits. The claimant did not apply for work at Kamber Engineering during that week. The Board also finds as a fact that the claimant did not apply for work at Computer Science Corporation during that week.

The claimant was laid off from his job at Bethlehem Steel and was anxiously awaiting his recall to that employment. During the week in question, however, he made no contacts at all in search of employment.

CONCLUSIONS OF LAW

The claimant was not actively seeking work within the meaning of Section 4(c) of the law for the week in question because he was not applying for any jobs during that week. He thus must be disqualified under Section 4(c) of the law for that week.

The claimant was paid benefits with respect to the week ending August 6, 1988; and since he was in fact not eligible, he is overpaid benefits for that week by operation of Section 17(d) of the law.

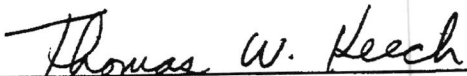
Since the claimant made a false statement, knowing it to be false, in order to obtain benefits under the unemployment insurance article, he is also disqualified under Section 17(e) for the week in question. He is also disqualified under Section 17(e) from the date the determination was made, October 4, 1988, and for the one year immediately following. This latter part of the 17(e) penalty may result in additional overpayments recoverable under Section 17(d) of the law for the one year period following October 4, 1988, but the record is not complete on which benefits, if any, the claimant received during this time. Any benefits received, however, were benefits for which the claimant was ineligible and would now be overpaid.

The claimant was not actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week ending August 6, 1988.

The claimant is overpaid benefits for the week ending August 6, 1988 within the meaning of Section 17(d) of the Maryland Unemployment Insurance Law.

The claimant made a false statement, knowing it to be false, within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week of October 4, 1988 and the one-year period immediately following. The claimant was overpaid for any benefits receiving during this time period.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:DW
kbm

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - TOWSON

John McGucken, Legal counsel, D.E.E.D.

Quality Control - Room 502

Recoveries - Room 413



Maryland

Department of Economic & Employment Development

William Donald Schaefer
GOVERNOR
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

-DECISION-

Mailed: 5/30/89

Melrone A. McCray

Date: 8810937 & 8810938

Claimant:

Decision No.: 220-50-1524

S. S. No.:

9

Employer:

LO. No.:

Claimant

Appellant:

Issue:

Whether the claimant is able, available and actively seeking work, within the meaning of Section 4(C) of the Law. Whether the claimant 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 benefit or other payment within the meaning of Section 17(e) of the Law. Whether the claimant was overpaid benefits within the meaning of Section 17(d) 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 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

6/14/89

—APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

Other: Karen Blass
Agency Representative

This case was remanded to the Hearing Examiner for a new decision. No additional hearing should be held unless the Hearing Examiner deems it necessary. The new Hearing Examiner scheduled another hearing.

FINDINGS OF FACT

The claimant had been employed by Bethlehem Steel Corporation for approximately ten years, his last job classification as an

Electronic Repairman at a gross salary of \$553 a week when his separation from this employment occurred on April 24, 1988 until November 21, 1988, he was laid off by this employer.

Internal Audits by computer randomly selected the claimant's claim certification for the week ending August 6, 1988. Investigation was made to determine whether the claimant properly filled out information in order to receive benefits for the week in question.

Information was contained on the claim certification form for that week which could not be verified by the investigator.

The claimant maintains that the information was correct to the best of his ability in knowledge.

There are glaring inconsistencies in the claimant's testimony. The claimant kept sloppy records as to his job seeking efforts for each week of his unemployment.

The claimant has prepared a resume and copies of a certification indicating his skills. He gives his education and work history resume and a certificate to all persons he personally contacts each week.

The claimant goes to at least five projective employers on the average of each week of his unemployment.

The investigator of the Department pursued all possible methods to determine whether the claimant's information on his claim certification was correct. The conclusion of the investigator was that the claimant knowingly failed to place the proper information for that week in order to receive unemployment insurance benefits, committing an illegal act within the unlawful act provision of Section 17(e) of the Maryland Unemployment Insurance Law.

CONCLUSIONS OF LAW

One weeks erroneous placing of job seeking efforts when someone personally contacts an average of five prospective employers a week along with sloppy record keeping, does not demonstrate the required intent of committing an illegal act as that term is defined under Section 17(e) of the Maryland Unemployment Insurance Law.

In the instant case, the claimant's claim certification was selected at random by a computer to be reviewed by the internal

audit department of the Department of Economic and Employment Development. It is found, that there are glaring inconsistencies in the claimant's claim certification for the week in question. It is also concluded, that internal audits pursued an investigation vigorously and that the information provided by the claimant could not be verified by them.

Therefore, the claimant should be denied unemployment insurance benefits under the able, available and actively seeking provisions of Section 4(c) of the Maryland Unemployment Insurance benefits for tha. one week only.

The determination of the Claims Examiner that the claimant committed an unlawful act within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law, shall be reversed.

DECISION

Under Appeal No. 8810938 - The claimant was not meeting the able, available and actively seeking provision of Section 4(c) of the Maryland Unemployment Insurance Law. The claimant is denied unemployment insurance benefits for the week beginning July 31, 1988 through and including August 6, 1988.

The determination of the Claims Examiner is affirmed.

Under Appeal No. 8810937 - The claimant did not commit an unlawful act as that term is defined and contemplated within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law. The denial of benefits from October 4, 1988 to October 2, 1989, is rescinded.

The determination of the Claims Examiner is reversed.

Date of hearing: 3/31/89
r c
(2658)-Specialist ID: 80850
Copies mailed on 5/30/89 to:

Claimant
Unemployment Insurance - Towson - MABS

Quality Control - Rm 502

Recoveries - Rm 413

Board of Appeals