



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.:	946-BR-89
	Date:	October 27, 1989
Claimant:	Robert F. Englemeyer	Appeal No.:
		8908811
		S. S. No.:
Employer:	Anne Arundel Co. Public Schools c/o Gibbens Company	S. No.:
		8
		Appellant:
		CLAIMANT
Issue:	Whether the claimant is eligible for benefits within the meaning of Section 4(f) 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 **November 26, 1989**

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Hearing Examiner but disagrees with some of his reasoning.

The Hearing Examiner incorrectly concluded that the phrase "in any such capacity" in Section 4(f)(3) requires the performance of service in the successive academic term to be of the exact same nature as the service previously performed. The Board disagrees. As long as the reasonable assurance is for service "in an instructional, research or principal administrative capacity," the Board concludes that that requirement of Section 4(f)(3) is fulfilled.

Further, the Hearing Examiner added an additional requirement that reasonable assurance be for a job "that would be appropriate." This requirement is not contained in the statute.

The Board does agree, however, that the claimant should not be disqualified under Section 4(f)(3), based on the fact that prior to the summer of 1989, the claimant had been a twelve month employee. As the Board has held in prior decisions, involving similar facts, this is not the case of unemployment during a period between two successive terms or during an established vacation period, contemplated by Section 4(f). See, e.g., Geary v. Board of Education of Baltimore County, 876-BR-89; see also, Ritchie v. Allegany County Board of Education, 205-BR-85.

For this reason, the decision of the Hearing Examiner is affirmed.

DECISION

The claimant did not have reasonable assurance of returning to work for the employer within the meaning of Section 4(f)(3) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his service to the Anne Arundel County School System.

The decision of the Hearing Examiner is affirmed.


Associate Member


Associate Member

H:D
kmb
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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - ANNAPOLIS

 **Maryland**
Department of Economic &
Employment Development

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Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201
(301) 333-5040

— DECISION —

Claimant: Robert F. Englemeyer
Date: Mailed: 8/29/89
Decision No.: 8908811
S. S. No.:
Employer: Anne Arundel Co. Public Schools
c/o The Gibbens Co., Inc. L.O. No.: 8
Appellant
Claimant

Issue:

Whether the claimant is eligible for benefits 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 EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 315, 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 9/13/89

— APPEARANCES —

FOR THE CLAIMANT

FOR THE EMPLOYER:

Claimant-Present

Marty Young,
The Gibbens
Company, Inc.
Clair Suitt,
Personnel Technician

FINDINGS OF FACT

The claimant is a long time employee of the Anne Arundel County

School System having worked in that system for twenty-four years. During the last fifteen years he has had a twelve month per year job in the system as an Assistant Principal in some other administrative capacity. The claimant was notified by a hand delivered letter on June 9, that effective July 1, 1988 for the subsequent school year, he would be assigned to a teaching position in a field of certification at a location to be named later. His job as an Assistant Principal ended on July 5, 1989.

The claimant has filed a grievance for having his job as Assistant principal taken from him and that is pending. The employer has as yet not told the claimant what he would be teaching, where he would be teaching. The claimant has indicated to the employer that he would prefer teaching in a senior high school in grades 9 to 12, biological sciences and has selected Chesapeake Senior High School as where he would like to teach. He has also demanded that he be continued in the same salary and cites school regulations and other agreements which he states supports his position.

School will begin in approximately two weeks and the claimant still does not know what he will be teaching or where. This is a totally unfair way to treat the claimant. He is not really given an opportunity to prepare himself to teach after having been in an administrative capacity in a twelve month job for many years.

The job that the claimant will have as a teacher will be a ten months job.

CONCLUSIONS OF LAW

The claimant is not disqualified under Section 4(f)(4) under the facts of this case. The claimant does not know what it is he will be teaching or where he will be teaching or what he will be teaching. The only thing clear is that he won't be doing what he was doing in the past and will have a job that now lasts ten months instead of twelve months. Under these terms, it cannot be found that he will be in the same capacity after a period between semesters or a vacation period.

Section 4(f)(4) is not the appropriate Section in this case. The appropriate Section should be 4(f)(3) because the claimant was being paid benefits based on covered service in a principal administrative capacity. The Section 4(f)(3) provides that the benefits may not be based on covered service for a period of unemployment that begins during a period of paid sabbatical leave or during a period between two successive academic years or terms if there is a reasonable assurance that the individual who

performs services in any such capacity for any educational institution in the second of two academic years or terms. This case is not a case in which the claimant will be working in any such previous capacity his previous was administrative his new capacity is teaching whatever he may be required to teach. It cannot even be found that he has reasonable assurance of having an appropriate teaching job since he has not been told what kind of job he will have. It would be totally inappropriate to assign him to some job in the first grade or some other job of that nature under the facts in this case and it would therefore not constitute an assurance of having a job that would be appropriate.

DECISION

The claimant was employed in a capacity as a principal administrative in the Anne Arundel County School System and there is no reasonable assurance that he would return to such employment during the coming school year, within the meaning of Section 4(f)(3) of the Maryland Unemployment Insurance Law.

The claimant is not disqualified from benefits based on his service to the Anne Arundel County School System under Section 4(f)(3) or 4(f)(4).

The determination of the Claims Examiner is reversed.


Martin A. Ferris
Hearing Examiner

Date of hearing: 8/21/89
rc
(7243)-Specialist ID: 08005
Copies mailed on 8/29/89 to:

Claimant
Employer
Unemployment Insurance - Annapolis - MABS