STATE OF MARYLAND
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Governor

RUTH MASSINGA
Secretary

DEPARTMENT OF HUMAN RESOURCES

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

—DECISION—

DECISION NO.: 1030-BR-83

DATE: August 18, 1983

CLAIMANT: James U. Severly, et al

APPEAL NO.: 03960

S.S.NO.:

EMPLOYER: Housing Authority of Baltimore

LO.NO.: 1

APPELLANT: EMPLOYER

ISSUE Whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §6(b) of the Law; and whether the appealing party filed a timely appeal or had good cause for an appeal filed late within the meaning of §7(c) (ii) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

In the cases of Charles L. Cooper , Robert Whitehead and Vincent Griffin, this decision is the final decision of the Board of Appeals on these claims. Either party may file an appeal from this is 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 the Claimant may reside.

The period for filing an appeal expires at midnight September 17, 1983.

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals affirms in part and reverses in part the decision of the Appeals Referee .

The Board affirms both the findings of fact and the conclusions of law of the Appeals Referee regarding Mr. Charles Cooper.

Regarding the other five Claimants, Whitehead, Jones , Griffin, Branch and Beverly, the Board disagrees with some of the conclusions of the Appeals Referee. The Appeals Referee based his decision on the fact that the Employment Security Administration had not received a letter sent by the Employer on October 6, 1982 to a Mr. Mark Wolf. This is the incorrect legal standard. The Board of Appeals has repeatedly ruled that that date when an. appeal is filed is the date when it is mailed to the Employment Security Administration and that the date used to determine when it is mailed is the postmark on the envelope. This has been the consistent policy of the Board of Appeals for for many years.

In the case of Mohr v. Universal C. I. T. , 216 Md. 197, 140 A.2d 49 (1958), the Court of Appeals ruled that proof of mailing is accomplished by testimony proving the mere existence of an invariable office custom or system of addressing and mailing. The Board concludes that the Employer did prove that the letter of October 6, 1982 was mailed on this date. In making this conclusion, the Board is liberally construing the statute in order to effectuate its purposes. See, §7(g) of the Law. The appeal of the five Claimants named above, therefore, was filed on October 6, 1982.

With regard to Clailants Beverly, Branch, and Jones, the appeal filed on October 6 was a timely appeal. Their cases will thus be remanded to the Appeals Referee for consideration of the merits of their cases.

An additional problem has arisen with respect to Claimants Whitehead and Griffin, however. Neither of these Claimants had been determined eligible as of October 6, 1982. There was therefore, nothing to appeal on October 6, 1982. Mr. Whitehead was not determined eligible until October 22, 1982 and Mr. Griffin until October 14, 1982.

The question which arises whether the Employer's letter of October 6, 1982 sufficed to appeal the determinations written 8 and 16 days later. The Employer's position is that it is clear that it opposed the granting of benefits to a group consisting of many Claimants, and that all technicalities should be overlooked in reaching a decision on the merits. Put another way, the Employer's position is that its letter of October 6 sufficed to appeal any and all determinations which bad been or would be later issued and which granted or would grant benefits to the named ex-employees.

The Board cannot accept this contention. The statute makes it clear that there is a three-part appeals process: from Claims Examiner's determination to Appeals Referee to Board of Appeals. If the sending of one generalized letter of protest would

suffice to appeal determinations that had not yet even been issued, there would be no point to the specific provisions in §7 as to how and -when an appeal could be filed at each level. Even if there were any question about this, the Employer was notified, in writing, after it had mailed the October 6 letter, that Claimants Whitehead (10/22/82) and. Griffin (10/14/82) had been awarded benefits. Yet the Employer filed nothing which could be conceivably called an appeal until at least January 25, 1985 (Employer's Exhibit No. 4).

The Employer did not file a timely appeal of the determination of October 14, 1982 (Griffin) and October 22, 1982 (Whitehead).

Concerning whether the Employer had "good cause" within the meaning of §7(c)(ii) for failing to file its appeal until January 25, 1983, the Board has just noted that the Employer received, after it had sent its letter of October 6, 1982 written notice that these two Claimants had been granted benefits . The Employer then simply waited three months, then sent another generalized letter concerning a whole list of ex-employees (one of whom had never even applied for unemployment benefits) to the Secretary of Human Resources. This letter requested the Secretary to review the cases directly, something the Secretary has no authority to do. Wilson v. Department of Human Resources, 286 Md. 639, 409 A.2d 713 (1979).

It is clear from this letter that the Employer either aid not read or chose to take no notice of the specific written informs. tion provided by the Employment Security Administration which clearly stated how a further appeal could be filed. The appeals process is set up by the statute, of course, to channel protests , in a rational way, within certain time constraints, to a disiterested body, the Appeals Division. The Employer simply either failed to read its mail or deliberately chose to ignore the process, and the Board concludes that neither of these reasons is "good cause" within the meaning of §7(c) (ii).

DECISION

The Claimant, Charles L. Cooper, was discharged for gross misconduct connected with the work within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 29, 1982 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1,530) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is affirmed, as to Charles L. Cooper.

The Employer has failed to demonstrate good cause for filing a late appeal pursuant to §7 of the Maryland Unemployment Insurante Law in the cases of Robert Whitehead and Vincent Griffin. These Claimants continue to be eligible pursuant to the Maryland Unemployment Insurance Law, provided they demonstrate that they have met all of the other eligibility requirements of the Law.

The decision of the Appeals Referee as to Whitehead and Griffin is affirmed.

The employer filed a timely appeal within the meaning of §7 Of the Maryland Unemployment Insurance Law, as to Claimants James Beverly, Grafton Branch and Morris Jones. Therefore, this case is remanded to the Appeals Referee to consider the merits on these three claimants. No new hearing is required, unless the Appeals Referee deems it necessary.

The decision of the Appeals Referee as to Beverly, Branch and Jones is reversed and remanded.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:W
zs

COPIES MAILED TO:

CLAIMANTS (as shown on List A attached)

EMPLOYER

Paul D. Shelton, Esquire

J. Martin Whitman - Appeals Referee

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
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BOARD OF APPEALS
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Associate Members
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MARK R. WOLF
Administrative
Hearings Examiner

– DECISION –

DATE: 6/20/83

CLAIMANT: James U. Beverly

APPEAL NO.: 03960-EP/Java

S.S.NO.:

EMPLOYER: Housing Authority of Baltimore

L.O.NO.: 1

APPELLANT: Claimant

ISSUE: Whether the claimant is subject to a disqualification of benefits within the meaning of Section 6(b) 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 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 July 5, 1983

–APPEARANCES-

FOR THE CLAIMANT:

Claimant-Present
Charles L. Cooper,
Grafton Branch,
Morris Jones,

FOR THE EMPLOYER:

Coy Richardson,
Personnel Officer
Daniel B. Bitzel,
Low Pressure Plant-
Supervisor
Donald Smott, Jr.,
Heating and Pumping
Supervisor
Deborah Mae Rhyne,
Principle Clerk,
Joseph J. Carbo,
Superintendant of
Heating Plant
Robert L. Baker,
Chief of Auditing
Represented by:
Paul D. Shelton,
Esquire

FINDINGS OF FACT

The employer appeals from non-monetary determinations relating to each of the six claimants who are identified in Exhibit A attached. Four of the claimants enumerated above were present at the hearing and Robert Whitehead, and Vincent S. Griffin were not present.

In all instances concerning all claimants who are the subjects of this appeal as enumerated on Exhibit A attached, non-monetary determinations were written. In each instance the claimant was found eligible under Section 6(b) of the Law.

In the case of Robert Whitehead a non-monetary determination was mailed to the claimant and the employer on October 22, 1982, advising them that the claimant was eligible for benefits and the last date for filing an appeal was November 8, 1982. The Housing Authority of Baltimore City, received the non-monetary determination and it was stamped as received by their office on October 25, 1982.

In the case of Morris Jones, a non-monetary determination was mailed to the claimant and the employer on October 1, 1982, advising them that the claimant was eligible for benefits and that the last date for filing an appeal was October 15, 1982. The employer received the non-monetary determination and stamped it in pursuant to their normal procedures on either October 1, or 11, 1982.

In the case of Vincent Griffin, a non-monetary determination was mailed to the claimant and to the employer on October 14, 1982, advising them that the claimant was eligible for Maryland unemployment insurance benefits and that the last date to file an appeal was October 28, 1982. The employer received this non-monetary determination at Baltimore City, even though it was mailed to 222 East Saratoga Street, which is the Housing Authority of Baltimore. It was stamped in as received by Baltimore City on October 18, 1982.

In the case of Grafton Branch, a non-monetary determination was mailed to the employer and to the claimant on October 1, 1982, advising them that the claimant was eligible for benefits under the Maryland Unemployment Insurance Law. This non-monetary determination was received by the employer at the City of Baltimore on October 14, 1982. The last date for filing an appeal was October 15, 1982. It was received at the Baltimore City office and not at 222 East Saratoga Street, even though that is the address to which the non-monetary determination was mailed.

In the case of James U. Beverly, a non-monetary determination was mailed to the claimant and to the employer on October 1, 1983, advising them that the claimant was eligible for Maryland unemployment insurance benefits and that the last date for filing an appeal was October 15, 1982. The Baltimore City Authority received the non-monetary determination and stamped it as part of its normal procedure of business on October 5, 1982.

In the case of Charles Cooper, a non-monetary determination was mailed to the claimant only, advising him that he was not denied benefits under the Maryland Unemployment Insurance Law. The employer was never mailed a copy of the non-monetary determination. On the non-monetary determination itself it shows that no employer was notified even though the issue was whether the claimant should be disqualified for gross misconduct connected with his work, within the meaning of Section 6(b) of the Law.

The Housing Authority of Baltimore City, provided the Employment Security Admininstration on September 22, 1982, copies of respective indictments against each of the claimants in the United States District Court for the District of Maryland. They also provided in that same written communication copies of newspaper clippings concerning events surrounding the matters or facts which were the subject of the indictments and respective letters of termination sent to each of the claimants in question.

Thereafter, there were telephone conversations between the Claims Examiners of the Employment Security Administration and the Personnel Officer of the Housing Authority. A Claims Examiner advised the Personnel Officer of the Housing Authority that the burden was on the Housing Authority of Baltimore to submit evidence that the claimants had, in fact, been discharged for either misconduct or gross misconduct connected with their work, within the meaning of Section 6(c) or 6(b) of the Maryland Unemployment Insurance or in the alternative if which did not occurr the claimants would eventually receive unemployment insurance benefits. There was even a subsequent conversation between the Personnel Officer and a Claims Examiner with regard to the need for additional or new data in order to make a fair and complete determination.

The Personnel Officer of the Housing Authority of Baltimore City on October 6, 1982, spoke with the Administrative Officer of the Appeals Division with regard to requesting that the matter come to the attention of an Appeals Referee and/or to the Board of Appeals, because the Housing Authority wished a hearing on all claims.

The position of the Housing Authority of Baltimore City, through its Personnel Officer is that it mailed to Mark Wolf, Administrative Officer, on October 6, 1982, a letter appealing each of the decisions concerning all of the claimants in question enumerating their Social Security Numbers and their termination dates and providing additional information. There were also other claimants who were addressed in the same letter. The letter was never received by any Division of the Employment Security Administration. The testimony of the Personnel Officer of the Housing Authority is that he mailed the letter in the due course of business in a routine fashion.

Thereafter, there was an exchange of correspondence between the Personnel Officer of the Housing Authority and various officials of the Employment Security Administration including the Secretary of the Department of Human Resources. There were also telephone conversations with the Chairman of the Board of Appeals and with the Administrative Officer of the Appeals Division.

Counsel to the Housing Authority then on March 18, 1983, filed an appeal in the cases of Beverly, Branch, Jones and Whitehead and on March 21, 1983, in the case of Griffin. The attorney for the Housing Authority makes no argument nor does he present any evidence why during March 1983, he specifically writes six separate and distinct letters stating that they are appeals to the Appeals Division of the Employment Security Administration. He does refer in the course of each and every one of the six communications to his earlier alleged correspondence of October 6,1982.

In the case of the claimant Charles L. Cooper, he worked for the Housing Authority of Baltimore City, from January 1974 until August 29, 1982, generally as a Laborer. He was tried in the United States District Court of Maryland on the charge that he knowingly and willfully retained money from the Housing Authority of Baltimore City, with the intent to convert such money to his own use having previously known that said money was embezzled, stolen or converted. The claimant explains in view of the fact that he worked overtime and that he knew that he was paid more than his overtime pay. He did accept checks which represented both his, base pay to which he was entitled and overtime pay some of which he knew he was not entitled to. He knew that basically overtime pay was paid to him on a "word of trust". When charged in,the United State Court he plead guilty. He also voluntarily executed an instrument by which he made restitution in the amount of $3,000 could be made to the Housing Authority of Baltimore City. He does not question the validity of the trial nor is there any appeal therefrom. He admits that the money he received was the result of overtime pay to which he was not entitled.

CONCLUSIONS OF LAW

The evidence reveals that in five of the six cases to the exclusion of the case of Charles L. Cooper, the employer failed to file a timely appeal and has failed to demonstrate good cause for the filing of a late appeal. The employer or the City of Baltimore, received copies of the non-monetary determinations which clearly advised the last date for filing an appeal. In each of the cases, excluding the case of Cooper, the employer was duly notified and failed to file an appeal until months after the last date for filing an appeal. While the employer presents a letter which would have been timely there is no document to show in any of the appeal files that the letter of October 6, 1982, was in fact, received by the Employment Security Administration. Since the documentation failed to exist, the employer's appeal as to the cases of the claimant's Beverly, Branch, Griffin, Jones and Whitehead will be considered as having been filed late and the employer failed to demonstrate good cause shown for filing a late appeal.

In the case of the claimant Cooper, the employer having received no copy of the determination it would normally follow therefore that the employer has demonstrated by its letter of March 18, 1983, that he has filed a late appeal but for good cause shown, of failing to have been notified of the initial eligibility of the claimant.

The evidence in the case of Cooper clearly shows that the claimant engaged in a series of repeated violations of employment rules which proved that the claimant has regularly and wantonly disregarded his obligations to his employer and, hence, the claimant's conduct is gross misconduct connected with the work, within the meaning of Section 6(b) and is disqualifying under that Section of the Law. Obviously, the taking of overtime money for hours that were not worked is not only a criminal offense for which the claimant has now plead guilty and offered to make restitution, but clearly it is tanamount to gross misconduct under Section 6(b) of the Law, by any measure used. He even states that he had acknowledged that he was overpaid and failed to bring this to the employer's attention. His actions are therefore, disqualifying under Section 6(b) of the Law.

DECISION

The appeal of the Housing Authority of Baltimore City, in the cases of James U. Beverly, Grafton Branch, Vincent S. Griffin, Morris Jones, and Robert Whitehead, is not timely and the employer has failed to demonstrate good cause shown pursuant to Section 7 of the Maryland Unemployment Insurance Law. These claimants continue to be eligible pursuant to the Maryland Unemployment Insurance Law, provided they demonstrate that they have met all of the other eligibility requirements of the Law.

The employer's protest as to each of these claimants is hereby denied.

The employer's appeal with regard to the case of Charles L. Cooper is found to have been filed late, but for good cause shown pursuant to Section 7(c) (ii) of the Maryland Unemployment Insurance Law.

The claimant, Charles L. Cooper was discharged for gross misconduct connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 29, 1982, and until he becomes re-employed and earns at least ten times his weekly benefit amount ($1,530) and thereafter becomes unemployed through no fault of his own.

The employer's protest with regard to the claim of Charles L. Cooper is hereby granted.

J. Martin Whitman /R.C.
J. Martin Whitman
Appeals Referee

Date of Hearing: 5/13/83
rc
(2257-A&B 437-A&B)-Smith
Copies mailed to:

Claimant
Employer
Unemployment Insurance - Baltimore