



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
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SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND
HARRY HUGHES
Governor

-DECISION-

CLAIMANT: Michael T. Pearson
DECISION NO.: 153-BR-84
DATE: February 17, 1984
APPEAL NO.: 12263
S.S. NO.:
EMPLOYER: Arrow Cab Company
LO. NO.: 45
APPELLANT CLAIMANT

ISSUE: Whether the Claimant performed services in employment within the meaning of § 20(g) 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 MAYBE 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 March 18, 1984

-APPEARANCE-

FOR THE CLAIMANT: REVIEW OF THE RECORD
FOR THE EMPLOYER:

After hearing reviewed the record in this case, the Board of Appeals modifies the decision of the Appeals Referee.

The Claimant is self employed as a cab driver full-time, working approximately 36 to 40 hours per week, four days per week. While the Appeals Referee was technically correct that the Claimant's earnings as a cab driver were not in covered employment pursuant to § 20(g)(6)(v), the Appeals Referee mistakenly concluded there, fore that the Claimant is disqualified from benefits. Under § 20(g)(6)(v), the Claimant's earnings as a cab driver cannot be included in his quarterly wages for determining his weekly benefit amount and monetary eligibility. This section of the law does not, however, pro-ride for a total disqualification from benefits.

The Board does conclude that the Claimant, who drives a cab 36 to 40 hours per week is not available for work within the meaning of § 4(c) of the Law.


DECISION

The Claimant does not perform services in covered employment for the Arrow Cab Company within the meaning of § 20(g)(6)(V) of the Maryland Unemployment Insurance Law.

The Claimant is not able, available and actively seeking full-time work, within the meaning of § 4(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning April 27, 1983, and until he meets all of the requirements of the Law.

The decision of the Appeals Referee is modified to this extent.

  
 Associate Member

  
 Associate Member

W:D  
 dp

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - PIMLICO



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
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STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

BOARD OF APPEALS  
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 Appeals Counsel  
 MARK R. WOLF  
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 Hearings Examiner

— DECISION —

CLAIMANT: Michael T. Pearson

DATE: Dec. 13, 1983

APPEAL NO.: 12263

S. S. NO.:

EMPLOYER: Arrow Cab Company

LO. NO.: 45(1)

APPELLANT: Claimant

ISSUE:

Whether the claimant was unemployed within the meaning of Section 4 and 20(1) 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 021201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON December' 28, 1983

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Michael T. Pearson, Present

William Schevker,  
 Personnel Manager

FINDINGS OF FACT

The claimant works about four nights a week, nine or, ten hours, as a Taxicab Driver for Arrow Taxicab. He commenced working there April 27, 1983 and then continued to work there and continues to work as recently as the night before the hearing.

As a Taxicab Driver, he determines his own itinerary and where he will try to secure passengers. He keeps all of the fares and tips he collects. He pays a certain amount of money for the lease of the motor vehicle known as a taxicab, and pays a certain formula for the use of gas. It does not make any difference to the parties how much money he makes from fares or tips. Generally, it costs him from \$47 to \$57 a shift as rental and gas for his cab. He makes no accounting to his employer of the fees that he collects or tips, but he does, by State Law keep a manifest of all the trips he makes. He has a right to establish his own ending hours, but is expected to start at a specific period of time so that the cab is on the street. It is understood between himself and the employer that all Federal and State self-employment taxes are to be taken care of by the claimant.

The claimant remains as a Taxicab Driver.

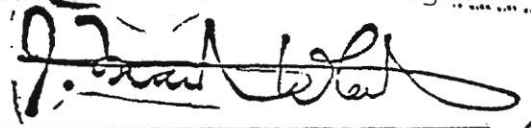
The claimant has been disqualified under Sections 4 and 20(1) of the Law and appeals.

#### CONCLUSIONS OF LAW

Section 20(g) 6(V) of the Maryland Unemployment Insurance Law discusses the use of a taxicab driver of taxicabs or taxicab equipment in a taxicab business. Under that Section of the Law, it has been held that the driver who pays a stipulated amount for the use of the taxicab or equipment but is required to make no further accounting or report to the owner and has access to the cab and equipment and has a right to establish generally his working hours and places where he will work, and where he is responsible for his own payment of Federal and State self-employment taxes, is not considered to be in covered employment under the Maryland Unemployment Insurance Law and, hence, is not eligible for benefits. Simultaneously, he may interestingly enough be considered to be self-employed under the applicable Regulation of the Maryland Code of Regulations and, therefore, may be considered to be not unemployed under Section 20(1) of the Law. However, this is immaterial. The claimant, in this case, clearly is a Taxicab Driver who does not account basically to his employer for anything except that he has a lease arrangement where he leases the equipment and pays for the use of gas. He keeps to himself all of the fares collected and all of the tips, and after the payment of certain established expenses to the owner of the cab is, therefore, free to keep the balance of the money for himself. He also performs all accounting and other functions for himself. He, therefore, is considered to be not in covered employment under this Section of the Law and is, hence, not eligible.

DECISION

The claimant is not in covered employment pursuant to Section 20(g)(5)(v) of the Maryland unemployment Insurance Law. He is disqualified from April 27, 1983, and until of the eligibility requirements of the Law are met.



J. Martin Whitman

APPEALS REFEREE

Date of-hearing: December 2, 1983

Cassette: 8658

hf (Hampton)

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Employer  
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