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.: 203-BR-90

Date: March 2, 1990

Claimant: Eric J. Danish

Appeal No.: 8915716

S. S. No.:

Employer: S. J. T. Service Corporation

L O. No.: 15

Appellant: CLAIMANT

Issue: Whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) of the law; whether the claimant filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c)(3) 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 April 1, 1990

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Hearing Examiner 'decided that the claimant did not have good cause for filing his appeal late in this case. The Board disagrees. The Hearing Examiner totally discounted the claimant's testimony that he did not understand the determination. The Hearing Examiner found that there was not good cause, because the claimant did not visit the local office in order to clarify what the determination was, and to decide whether to appeal. Although this ruling may be appropriate in most cases, it is not appropriate in this case because the vague and confusing wording of the determination itself led the claimant not only to be confused about what it meant but to misinterpret what it meant. This misinterpretation led him to believe that he had already met all the conditions to have the penalty lifted. The Board concludes that the claimant's misinterpretation was reasonable, in light of all the circumstances of this case.

The determination recited that the claimant had been contacted by a former employer, a temporary employment agency, and offered jobs, but that he contacted that agency and stated that he no longer wished to work with them. Based upon these facts, the determination ruled that the claimant was "restricting his availability for work." He was disqualified from the "weeks beginning 10/15/89 until meeting requirements of the law." The claimant had decided that he would rather work with another temporary agency in whose integrity he had more confidence. He believed that he was no longer restricting his availability, since he was looking for work on his own and had also signed up with another temporary agency. This is a reasonable interpretation of what the determination said.

It is unclear even to the Board what the determination means with respect to having the penalty lifted. The claimant interpreted it as meaning that he would be penalized under Section 4(c) until he signed up for work at a temporary agency, but that he did not have to sign up specifically with S. J. T. Service Corporation in order to have the penalty lifted. Since it is difficult for the Board to believe that the determination means that the claimant will be disqualified under Section 4(c) of the law until he signs up for work with S. J. T. Service Corporation, but since there is also no specific statement on the determination of how the claimant could otherwise meet the eligibility requirements of Section 4(c) of the law, the Board concludes that the claimant's interpretation was reasonable. Since the claimant was following a reasonable interpretation of the determination in deciding that the penalty had already been lifted, he had good cause for failing to file his appeal until he was later told that the penalty was still in effect.

On the merits, the Board reverses the determination of the Claims Examiner. The claimant worked for S. J. T. Service Corporation, a temporary agency, from March of 1988 through October 14, 1988. The record does not show whether he had any subsequent employment. But in any case, the claimant applied for benefits in September of 1989. After the claimant was filing for benefits, he received some phone messages from S. J. T. Corporation. He had some difficulty in getting back to them. When he did, he was told that no work was available. The claimant then informed them that he no longer wished to work through them and had applied at another temporary agency. At that point, S. J. T. Corporation informed him that there were jobs available that he could have gotten. The claimant was otherwise able to work and available for work and was contacting two employers through personal contacts each week of his claim. He also signed up with another temporary employment agency.

There is nothing in the law which requires that a claimant sign up with a specific private employment agency in order to be available for work within the meaning of Section *4(c)* of the law. There is nothing which requires him to sign up with any private temporary employment agency in order to meet those requirements. The claimant was otherwise available for work and actively seeking work, and the penalty under Section 4(c) will be reversed.

A claimant can be disqualified for refusing suitable work under Section 6(d) of the law. This is the section of the law under which this determination should have been written in this case. There was at least an allegation by an employer that an offer of work had been made to the claimant. A refusal could have been a refusal of suitable work within the meaning of Section 6(d) of the law. In this case, however, there is no credible evidence of an offer of any work communicated to the claimant in a reasonable manner. The claimant was told when he contacted this employer that the job about which they had earlier called was not available. After he informed this employer that he no longer wished to use them as his temporary employment agency, a statement was made that other jobs were available. This is not a good faith offer of suitable employment within the meaning of Section 6(d). For the above reasons, no penalty is imposed under Section 6(d) of the law either.

DECISION

The claimant had good cause for filing his appeal late within the meaning of Section *7(c)(3)* of the Maryland Unemployment Insurance Law.

The claimant was meeting the eligibility requirements of Section 4(c) of the Maryland Unemployment Insurance Law. No penalty is imposed based upon his contacts or lack of contacts with S. J. T. Service Corporation. The claimant was not offered suitable work within the meaning of Section 6(d) of the law. No penalty is imposed under Section 6(d) of the law.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:DW
kbm
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WESTMINSTER

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed: 1/12/90

Claimant: Eric J. Danish

Appeal No.: 8915716

ıd 21136

S. S. No.:

Employer: S. J. T. Service Corp.

LO No.: 15

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515 1100 NORTH EUTAW STREET. BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON 1/29/90

— APPEARANCES —

FOR THE CLAIMANT: Claimant-Present

FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits establishing a benefit year effective-September 10, 1989, with a weekly benefit amount of $121. Thereafter, a copy of the Claims Examiner's determination which denied benefits for the week beginning October 15, 1989, until meeting requirements of the Law, on the grounds that the claimant had not met eligibility

requirements of Section 4(c) of the Law, was mailed to the claimant at his address of record. This determination bore the appeal deadline of November 17, 1989.

The claimant, who received the determination before the appeal deadline, filed his appeal on December 18, 1989.

Although the claimant did not understand the determination when he received it, he did not inquire about it either by phone or in person at the local office where he established his claim until after the appeal deadline.

CONCLUSIONS OF LAW

It is held that the appeal is untimely and the claimant's reason for failing to file a timely appeal does not constitute good cause for so doing, within the meaning and intent of Section 7(c)(3) of the Maryland Unemployment Insurance Law. This means the Hearing Examiner has no jurisdiction to rule on the merits of the case and the determination of the Claims Examiner must be allowed to stand.

DECISION

The claimant failed to file a valid and timely appeal, within the meaning of Section 7(c) (3) of the Maryland Unemployment Insurance Law.

The claimant was not able, available or actively seeking work, within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied from the week beginning October 15, 1989 and until meeting the requirements of the Law.

The determination of the Claims Examiner is affirmed.

P. J. Hackett

P.J. Hackett
Hearing Examiner

Date of hearing: 1/8/90
rc
(11037-A)-Specialist ID: 15702
Copies mailed on 1/12/90 to:

Claimant
Unemployment Insurance - Westminster - MABS