

 **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.:	272-BH-91
Robert S. Smith	Date:	March 13, 1991
Claimant:	Appeal No.:	9008674
Donald Perdew	S. S. No.:	9008675
Employer:	Allegany County Bd. of Education No.:	3
	Appellant:	CLAIMANT
Issue:	Whether the claimant had a contract or reasonable assurance of returning to work under Section 4(f)(4) 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES

April 12, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Robert Smith - Claimant
Donald Perdew - Claimant
Cynthia Fenimore, Esquire - Legal Aid Bureau

FOR THE EMPLOYER:

Not Represented

PROCEDURAL NOTE

These cases were consolidated for the purposes of this hearing, due to the similarity of issues and facts.

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.

FINDINGS OF FACT

The claimants are employed by the Allegany County Board of Education as substitute custodians and cleaners. The claimants would fill in for regular custodians when they were sick or on vacation. Their last day of work, prior to the summer of 1990, was June 6, 1990. They were, however, available and subject to be called to work all summer long. At least three full-time custodians worked during the summer of 1990. Some substitute custodians were called in to help clear asbestos at one of the schools. The claimants themselves had worked during past summers.

The claimants signed letters of intent to continue as substitute cleaner/custodians for the '90-'91 school year. Without these letters, their names would have been removed from the substitute list.

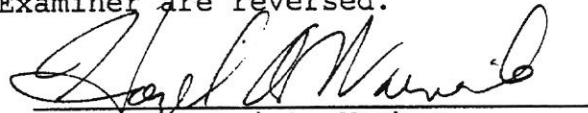
CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimants are not disqualified under Section 4(f)(4) of the law. The Board need not reach the issue of reasonable assurance because the claimants' period of unemployment had no relationship to the period between two successive academic years. They were and are substitute custodians who work sporadically, but on a year round basis. They were on call 12 months, including the summer. Although they did not work during the summer of 1990, as other custodians did, these claimants worked during other summers. Therefore, a disqualification under Section 4(f)(4) is not appropriate. See, Ritchie v. Allegany County Board of Education, 205-BR-85.

DECISION

The claimants were not unemployed for a period between two successive academic years or terms, within the meaning of Section 4(f)(4) of the law. No disqualification is imposed based upon the claimants' separation from employment with Allegany County Board of Education.

The decisions of the Hearing Examiner are reversed.



Associate Member



Associate Member

H:D

kmb

DATE OF HEARING: October 23, 1990

COPIES MAILED TO:

CLAIMANTS

EMPLOYER

Mr. Charles Webb
Webb Services
256 Young Drive
Monroeville, PA 15146

Legal Aid Bureau, Inc.
ATTN: Cynthia Fenimore, Esquire
110 Greene Street
P. O. Box 1079
Cumberland, MD 21502

The Gibbens Company
P. O. Box 4628
Baltimore, MD 21212

UNEMPLOYMENT INSURANCE - CUMBERLAND

 **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 —

Mailed: 7/26/90

Date:

Claimant: Robert S. Smith

Appeal No.: 9008674

S. S. No.:

Employer: Allegany County Board
of Education

LO. No.: 003

Appellant: Claimant

Issue: Whether the claimant had a contract or reasonable assurance
of returning to work under Section 4(f)(4) 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 MAYBE 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 A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON August 10, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Charles Webb,
Gibbens Company

FINDINGS OF FACT

The claimant has been employed from September, 1987 as a substitute cleaner-custodian at a pay rate of \$3.60 per hour on a part-time, (on-call) basis. His last day of work was on or about June 6, 1990. on or about that day, he had reasonable assurance of returning to his usual work when school reopens in September.

CONCLUSIONS OF LAW

It is held that the claimant is not eligible for benefits under Section 4(f)(4) of the Maryland Unemployment Insurance Law. Benefits are denied from June 10, 1990 to August 25, 1990. The determination of the Claims Examiner so holding was warranted and will be affirmed.

DECISION

The claimant is not eligible for benefits under Section 4 (f) (4) , benefits are denied from June 10, 1990 to August 25, 1990.

The determination of the Claims Examiner is hereby affirmed.



P.J. Hackett
Hearing Examiner

Date of Hearing: 7/20/90
ps/Specialist ID: 03264
Cassette No: 4967A
Copies mailed on 7/26/90 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)

Charles Webb
Webb Services
256 Young Drive
Monroeville, PA 15146

The Gibbens Company, Inc.
P.O. Box 4628
Baltimore, MD 21212

 **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

— D E C I S I O N —

Mailed: 7/26/90

Date:

Claimant: Donald W. Perdew

Appeal No.: 9008675

S. S. No.:

Employer: Allegany County Board of
Education

LO. No.: 003

Appellant: Claimant

Issue: Whether the claimant had a contract or reasonable assurance
of returning to work under Section 4(f)(4) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

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THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON August 10, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present
Ronald Sapp
(Witness)

FOR THE EMPLOYER:

Charles Webb,
Gibbens Company

Florine A. Taylor, Legal Assistant
Legal Aid Bureau, Inc.

FINDINGS OF FACT

The claimant has been employed since February 27, 1989 as a substitute janitor, "on call," as needed at a pay rate of approximately \$3.80 per hour. His last day of work was on or about June 6, 1990. At that time, the claimant had reasonable assurance that he would continue his employment on the same terms when school reopened in early September, 1990.

CONCLUSIONS OF LAW

It is held that the claimant is not entitled to unemployment benefits under provisions of Section 4(f)(4) in that he has reasonable assurance of returning to his regular employment at the end of summer of 1990. The determination of the Claims Examiner was warranted and will be affirmed.

DECISION

The claimant is not entitled to benefits under Section 4(f)4 of the Maryland Unemployment Insurance Law. Benefits are denied from June 10, 1990 to August 25, 1990.

The determination of the Claims Examiner is hereby affirmed.



P.J. Hackett
Hearing Examiner

Date of Hearing: 7/20/90
ps/Specialist ID: 03250
Cassette No: 4966
Copies mailed on 7/26/90 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)