

- DECISION -

Claimant:	Decision No.:	3372-BR-11
DAVID A RICHARDSON	Date:	July 08, 2011
	Appeal No.:	1032400
	S.S. No.:	
Employer:	L.O. No.:	60
LEUKEMIA SOCTY OF AMERICA INC	Appellant:	Claimant

Issue: Whether the claimant failed to file proper claims for benefits within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 901.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: August 08, 2011

REVIEW ON THE RECORD

After a review on the record, and after deleting the second and fifth sentences of the first paragraph, the Board adopts the hearing examiner's modified findings of fact and conclusions of law.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or evidence that the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

Section 8-901 states an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the Secretary finds that the individual meets the requirements of this subtitle.

In his appeal, the claimant reiterates his contentions concerning the characterization of his earnings from two different employers. That was not the issue at the hearing. The issue was whether the claimant had failed to file a proper claim because he had not attended an interview as instructed by the Agency.

The evidence establishes that, on July 28, 2010, the claimant advised the Agency he would be out of town for a period of two weeks. The Agency mailed the notice to the claimant on August 3, 2010, for an appointment on August 9, 2010. The claimant had been told to complete the paperwork, and send it to the Agency if he was not available for the interview. The claimant complied. The evidence shows that the claimant did what he was told to do by the Agency. The claimant did not fail to file proper claims based upon his non-appearance at an interview scheduled when the Agency had been timely notified that he would not be available to attend.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the Agency did not meet its burden of demonstrating that the claimant failed to file proper claims by failing to report for an appointment as instructed by the Agency, within the meaning of *Md. Code Ann., Lab. & Empl. Art. §8-901*. The decision shall be reversed for the reasons stated herein.

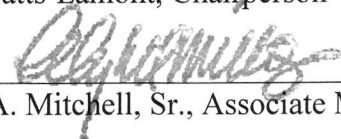
DECISION

The claimant filed valid and proper claims within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 901 and COMAR 09.32.02.04. Benefits are allowed for the week beginning June 27, 2010.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

DAVID A. RICHARDSON
LEUKEMIA SOCTY OF AMERICA INC
HARRY FRIEDMAN
SUSAN BASS DLLR
LEUKEMIA SOCTY OF AMERICA INC
LINDA BOYD ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DAVID A RICHARDSON

SSN #

Claimant

vs.

LEUKEMIA SOCTY OF AMERICA INC

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1032400

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

January 13, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, BARBARA BALDUMAN, LINDA BOYD, ESQ., GAIL DISTLER, ESQ.

For the Agency:

ISSUE(S)

Whether the claimant has filed proper claims for Unemployment Insurance benefits within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 901.

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits establishing a benefit year beginning June 27, 2010 with a weekly benefit amount of \$136.00. Claimant failed provide the requested information to the agency when he filed the claim. A telephone interview was scheduled to resolve the issue of whether the claimant was an employee with the employer of record. The claimant was working as a contractor with the employer of record on a part time basis. The claimant felt that as a contractor, this position was not relevant to his claim for unemployment benefits. The claimant continued to work for the employer of record, but he did not report his earnings to the agency while filing his continuing claims.

The claimant began to receive benefits during the week starting October 10, 2010. The claimant was determined to be a regular employee of the employer of record for the purposes of unemployment insurance benefits. After that issue was resolved and the claimant began to receive benefits, he continued to fail to

report his earnings from this employer.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-901 provides that an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the individual meets the requirements of this subtitle.

COMAR 09.32.02.04 C provides that the Secretary may instruct the claimant to report for an appointments:

- (1) The Secretary shall schedule an appointment for a claimant:
 - (a) Whenever there is an indication that the claimant does not meet the requirements of the Unemployment Insurance Law or these regulations; and
 - (b) Periodically to monitor the claimant's continuing ability to work, availability for work, and to assist the claimant in the work search process.
- (2) The claimant shall be given notice by mail or electronic means of the time, date, place, and type of the appointment and notified whether the appointment will be by telephone or in person. The notice shall include any issue to be resolved.
- (3) If the claimant is unable to report as instructed for the appointment, the claimant shall complete the form provided and return it to the Secretary before the appointment. The claimant's response shall include the reason the claimant is unable to report as instructed and shall provide any information that should be considered on the issue to be resolved.
- (4) If the claimant fails to report as instructed for the scheduled appointment or the office designated by the Secretary does not receive requested information from the claimant by the time of the appointment, the decision shall be based on information available to the Secretary at the time of the appointment.
- (5) If the claimant fails to report as instructed for any scheduled Department appointment, benefits may be terminated or suspended for that reason alone.

EVALUATION OF EVIDENCE

In the Case at bar, the credible evidence establishes that the Claimant failed to file proper claims for the weeks for which the Claimant is seeking benefits. Specifically, the claimant did not report for an appointment as instructed by the agency. Therefore, the disqualification remains in full force, until the claimant provided the information as requested by the agency.

DECISION

IT IS HELD THAT the claimant failed to file valid and proper claims for benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 and COMAR 09.32.02.04B. Benefits are denied for the week beginning June 27, 2010 and until the claimant files claims in accordance with the law.

The determination of the Claims Examiner is affirmed.

S Weber

S Weber, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right to Petition for Review

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by January 28, 2011. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 03, 2011

DW/Specialist ID: UTW7D

Seq No: 002

Copies mailed on January 13, 2011 to:

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