

-DECISION-

Claimant:
DONNIE B COLEMAN

Decision No.: 4998-BH-13

Date: December 6, 2013

Appeal No.: 1317330

Employer:

S.S. No.:

L.O. No.: 65

Appellant: Claimant

Issue: Whether the claimant earned wages, in covered employment, since the beginning of the previous benefit year, that were greater than ten times the Weekly Benefit Amount the claimant is eligible for on the second benefit year, within the meaning of MD. Code Annotated, Labor and Employment Article, Section 910.

- 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: January 5, 2014

- APPEARANCES -

FOR THE CLAIMANT:
Donnie B. Coleman

FOR THE AGENCY:
Failed to Appear

EVALUATION OF THE EVIDENCE

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, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

In the instant case, the claimant sufficiently supplemented her prior testimony with documentary evidence that supports a finding that the claimant earned greater than ten times her weekly benefit amount in covered employment rendering the claimant eligible for a second benefit year.

The Board notes that the Agency, duly notified of the date, time and place of the hearing before the hearing examiner and the Board, failed to appear. The Board finds the claimant credible. The Board is persuaded based upon a preponderance of the credible evidence that the claimant earned in excess of ten times her weekly benefit amount since the beginning of the previous benefit year.

Because the claimant prevailed on the late appeal issue and because this issue was not appealed to the Board, the Board finds the hearing examiner's decision regarding the late appeal issue final and not presently before the Board. The Board shall not further address the late appeal issue in this decision.

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits establishing an initial benefit year beginning May 6, 2012. The claimant filed for a second benefit year beginning May 6, 2013. The claimant's weekly benefit amount is \$430.00.

From May 7, 2012 through May 22, 2012, the claimant earned \$7883.12. The claimant's earnings during her initial benefit year are in excess of ten times her weekly benefit amount.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. *COMAR 09.32.06.01(B)* provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any office of the Department of Labor, Licensing and Regulation ("DLLR") that accepts appeals, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. *COMAR 09.32.06.01B(3)* provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. *Francois v. Alberti Van & Storage Co.*, 285 Md. 663 (1979) and *Matthew Bender & Co. v. Comptroller of the Treasury*, 67 Md. App. 693, 509 A.2d 702 (1986).

There is rebuttable presumption in law that a letter properly posted will be delivered to the address in due course. *Border v. Grooms*, 267 Md. 100 (1972).

Md. Code Ann., Labor & Emp. Article, Section 8-910 provides that "...an individual who has received benefits in a (particular) benefit year is not eligible for benefits in a subsequent benefit year unless, after the beginning of the first benefit year, the individual earns wages for covered employment under this title that equal at least 10 times the weekly benefit amount for the subsequent benefit year." See also, *COMAR 09.32.02.07*.

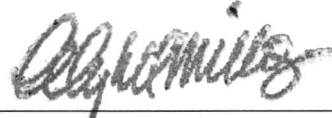
Section 8-910 and the above-cited provision of *COMAR* preclude a claimant from receiving benefits in a second benefit year unless he or she has earned at least ten times the weekly benefit amount established for the second benefit year.

In the instant case, the Board finds the weight of the credible evidence supports a finding that the claimant earned in excess of ten times her weekly benefit amount in covered employment since the beginning of the previous benefit year. The claimant is eligible for benefits for a second benefit year. The hearing examiner's decision shall be reversed for the reasons stated herein.

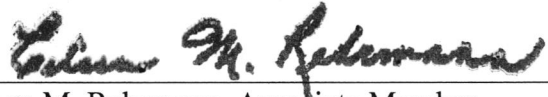
DECISION

THE BOARD HOLDS that the claimant demonstrated sufficient earnings to qualify for benefits in a subsequent benefit year within the meaning of *Md. Code Ann., Lab. & Empl. art., Section 8-910*. The claimant is eligible for benefits from the week beginning May 5, 2013 provided she meets the other requirements of the law.

The hearing examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

VD

Date of hearing: November 12, 2013

Copies mailed to:

DONNIE B. COLEMAN

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DONNIE B COLEMAN

Before the:

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

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

SSN #

Claimant

vs.

Employer/Agency

Appeal Number: 1317330

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

August 06, 2013

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant earned wages, in covered employment, since the beginning of the previous benefit year, that were greater than ten times the Weekly Benefit Amount the claimant is eligible for on the second benefit year, within the meaning of MD. Code Annotated, Labor and Employment Article, Section 910. Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

FINDINGS OF FACT

A Notice of Benefit Determination was mailed to the claimant, Donnie Coleman, in this case. The determination had an appeal deadline of May 24, 2013. In this case, the appeal was filed by facsimile on June 4, 2013. The claimant offers as a reason for the late appeal that she never received the benefit determination and was not aware that this issue existed until she filed an appeal in another matter.

The claimant filed for unemployment insurance benefits establishing a benefit year effective May 6, 2013 with a weekly benefit amount of \$430.00.

The claimant had previously applied for benefits establishing a benefit year beginning May 6, 2012. Since establishing that first benefit year, the claimant alleged that she has earnings of approximately \$6,000.00. The claimant was unable to produce any paystubs or other evidence to definitively verify her earnings.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. COMAR 09.32.06.01(B) provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any office of the Department of Labor, Licensing and Regulation ("DLLR") that accepts appeals, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.06.01B(3) provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. Francois v. Alberti Van & Storage Co., 285 Md. 663 (1979) and Matthew Bender & Co. v. Comptroller of the Treasury, 67 Md. App. 693, 509 A.2d 702 (1986).

There is rebuttable presumption in law that a letter properly posted will be delivered to the address in due course. Border v. Grooms, 267 Md. 100 (1972).

Md. Code Ann., Labor & Emp. Article, Section 8-910 provides that "...an individual who has received benefits in a (particular) benefit year is not eligible for benefits in a subsequent benefit year unless, after the beginning of the first benefit year, the individual earns wages for covered employment under this title that equal at least 10 times the weekly benefit amount for the subsequent benefit year." See also, COMAR 09.32.02.07.

Section 8-910 and the above-cited provision of COMAR preclude a claimant from receiving benefits in a second benefit year unless he or she has earned at least ten times the weekly benefit amount established for the second benefit year.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

In the instant case, the claimant filed a late appeal within the meaning of Section 8-806. The appeal was tendered on June 4, 2013 which was after the deadline date. Once an appeal has been filed late, the burden is on the appealing party to show by credible evidence that good cause exists. Cooper v. Holy Cross Hospital, 328-BR-86. In this case, the claimant has met this burden because she was never given proper notice of the benefit determination. Thus, given the circumstances, the claimant has shown due diligence in pursuing her appeal rights and the late-filed appeal will be permitted.

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

In this matter, while the claimant credibly testified that she had earned approximately \$6,000.00 since the start of her prior benefit year, she was unable, despite being allowed additional time, to produce any documentary evidence to support and thus verify her actual earnings during the period in question. In the absence of said evidence, it must be determined that the claimant has not earned sufficient wages since the start of her prior benefit year to qualify for a second benefit year, pursuant to the terms of Section 8-910.

DECISION

IT IS HELD THAT appellant filed a late appeal, but with good cause shown, thus allowing the Hearing Examiner to reach and rule upon the substantive issues in this case.

IT IS FURTHER HELD THAT the claimant has failed to demonstrate sufficient earnings to qualify for benefits in a subsequent benefit year within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-910. The claimant is denied benefits from the week beginning May 5, 2013 and until the claimant has sufficient qualifying earnings and meets the other eligibility requirements of the Maryland Unemployment Insurance Law.

The determination of the Claims Specialist is affirmed.



C S Spencer, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 August 21, 2013. 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 : July 23,2013

TH/Specialist ID: WOK4A

Seq No: 002

Copies mailed on August 06, 2013 to:

DONNIE B. COLEMAN

LOCAL OFFICE #65

SUSAN BASS DLLR