



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	652-BH-90	
	Date:	June 29, 1990	
Claimant:	Carroll K. Simmons	Appeal No.:	9001426
		S. S. No.:	
Employer:		L O. No.:	40
		Appellant:	CLAIMANT
Issue:	Whether the claimant filed proper claims for benefits within the meaning of Section 4(b) 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 AT MIDNIGHT ON July 29, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Carroll Simmons - Claimant

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
John T. McGucken - Legal Counsel

EVALUATION OF THE EVIDENCE

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 Economic and Employment Development's documents in the appeal file.

The original issue in this case was whether the claimant filed timely claims for benefits for the five-week period between December 24, 1989 and January 27, 1990. At the Board hearing, the agency conceded that the claimant had filed a timely claim for the week ending December 30, 1989; and the claimant conceded he was not eligible for benefits for the week ending January 6, 1990 on account of his earnings that week. The following three weeks, the weeks ending January 13, 20 and 27, are the only weeks still at issue.

FINDINGS OF FACT

The claimant filed a claim for partial benefits for the week ending December 30, 1989. The timeliness of the claim card for that week is no longer at issue.

The claimant was mailed a bi-weekly claim card for the weeks ending January 6 and January 13, 1990. This card was mailed to him on January 18, received by him on January 19 and received back by the agency, completed by the claimant, on January 23, 1990.

On this bi-weekly claim card, the claimant indicated that he had worked and earned more than his weekly benefit amount for the week ending January 6. For the week ending January 13, the claimant indicated that he had no earnings, and he claimed benefits for that week.

The next bi-weekly card, for the weeks ending January 20 and January 27, was not mailed to the claimant. When he didn't receive it, he visited his local office on January 29 and filed the cards in person.

The Claims Examiner then ruled that the claims filed for the weeks ending January 13, 20 and 27, 1990 were untimely.

Each of these three claims was filed timely within the agency's guidelines. But the claimant was disqualified because, once he indicated on the January 6 card that he earned more than his weekly benefit amount, the computer closed his claim. Even though the claimant indicated on the other half of his bi-weekly claim form that he was not employed for the week ending January 13, he was not paid benefits for this week.

Non-payment of the claim for the week of January 13, however, was not the only result. In addition, the agency stopped mailing the bi-weekly claim cards to the claimant. The next bi-weekly claim card, for the weeks ending January 20 and 27, was not mailed to the claimant. When this card did not come in the mail, the claimant visited his local office during the following week, on January 29. This is the procedure recommended by agency publications when a card does not come in the mail.

But the claimant's visit to the local office was deemed to be a visit to establish a new claim, (since the computer had closed his claim as of January 6). Since this was considered to be a new claim, it could not be backdated to any previous week. The claim for the week of January 13 was not counted, even though filed on time, because the computer closed his claim in the middle of the bi-weekly claim period as soon as it noted that he had been working the previous week. The claim for the weeks of January 20 and 27 was not counted, even though filed on time, for the same reason.

CONCLUSIONS OF LAW

Although there was a type of logic employed in disqualifying the claimant for these three weeks, it is not the type of reasoning that can be used in a legal system that has basic fairness as one of its objectives.

The claimant filed claims for all three weeks on time. He made a special effort to file the last two weeks' claims on time when the agency didn't properly send the claim forms to him in the mail. Although he filed the claims on time, they were counted as late. This occurred because an automatic agency process had closed his claim. But there was no reasonable justification for closing his claim.

For a governmental agency to deem an application to be untimely, when it was in fact filed timely, is to take a step which conflicts with ordinary logic. Such a step should be taken only when required by the most definite of statutory commands. The agency has presented no statutory language requiring such a step.

The justification presented was that the claim was "closed." But the claim was not closed because of any statutory requirement; it was closed primarily because the agency's data processing system is programmed to close cases in this situation. The agency's processing system in effect created a new disqualification, one which does not exist in the statute.

Thus, the data processing system was allowed to override the law. This is a classic case of the tail wagging the dog. The legislature did not, by enacting Section 4(b) of the law, vest the data processing system with the authority to create additional disqualifications unrelated to, and in fact disruptive of, an orderly claims process.

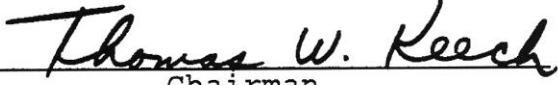
Since the claims were filed on time, the claimant will be found to have met the requirements of Section 4(b) of the law for the weeks in question.

DECISION

The claimant filed timely claims for benefits, within the meaning of Section 4(b) of the law, for the weeks ending December 30, 1989 and January 6, 13, 20 and 27, 1990. No 4(b) disqualification is imposed with respect to these weeks.

The claimant was not unemployed for the week ending January 6, 1990, within the meaning of Section 20(1) of the law. He is disqualified from receiving benefits for that week.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member


Associate Member

K:H:D

kmb

DATE OF HEARING: June 26, 1990

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - EASTPOINT

John T. McGucken - Legal Counsel



Maryland

Department of Economic & Employment Development

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— D E C I S I O N —

	Date:	Mailed: 2/26/90
Claimant: Carroll K. Simmons	Appeal No.:	9001426
	S. S. No.:	
	LO. No.:	40
Employer:	Appellant:	Claimant

Issue: Whether the claimant filed to file proper claims for benefits within the meaning of Section 4(b) 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 March 14, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:	FOR THE EMPLOYER:
Claimant - Present	
Other: Joseph Manz - DEED	

FINDINGS OF FACT

The Claimant file a claim for Unemployment Insurance benefits establishing a benefit year effective February 12, 1989 and a weekly benefit amount \$205.00. The Claimant was disqualified from receiving benefits from December 24, 1989 until January 27, 1990 because the local office found that the claimant fail to file claims for benefits in a timely manner in accordance with Section 4(b) of the Maryland Unemployment Insurance Law.

The testimony disclosed that the Claimant did not mail the claim certification form for the week ending December 30, 1989 until on or after January 13, 1990, because the claims certification form for the week ending December 30, 1989 was not completed by the Claimant until January 13, 1990. (See Agency's Exhibit 2). That claims certification form was issued by the Agency on the December 28, 1989, allowing plenty of time for the form to be completed by the Claimant and returned to the Agency. Because that claims certification form was not received in a timely manner, the subsequent claims certification form for the week ending January 6, 1990 was not issued by the Agency until January 18, 1990. Thereafter the claims certification forms for the weeks subsequent to December 30, 1989 were not received by the Agency in a timely fashion.

The Claimant received a copy of the booklet entitled "What You Should Know About Unemployment Insurance In Maryland". That pamphlet advises claimants to report immediately to the local office if they do not receive a check during any week. However, the Claimant did not report to the local office until January 29, 1990.

CONCLUSIONS OF LAW

Article 95A, Section 4(b) provides that a claimant must file timely claims in order to be eligible for benefits.

COMAR, Title 24, subsection .02.02.03D provides, in essence, that a claimant shall file his/her initial claim in person and thereafter only by mail on claim certification forms issued to him/her. If such claim certification forms are promptly received by the claimant, it is his/her responsibility to report immediately to the local office to obtain claim forms and/or resolve any problems with the claim. A claimant has the burden to show that he has complied with all Agency procedures. See In Re Imbesi (588-BH-82, 390-BH-84) and In Re Spigel (580-BH-85).

In this case the Claimant did not meet his burden to show that he has complied with all Agency procedures. The Claimant did not mail the claim certification form for the week ending December 30, 1989 in a timely fashion. He did not mail that claims certification form within 14 days from the last day of the week covered by the claims certification form. Claims certification forms must be received by the Agency within 14 days from the last day of the second week covered by the claims certification form. Because that claims certification form was not received by the Agency in a timely fashion, the subsequent claims certification forms were delayed in being issued. Moreover, the Claimant failed to report to the local office in a timely fashion when he did not received his benefits.

Under these circumstances the determination of Claim Examiner under Section 4(b) of the Maryland Unemployment Insurance Law is affirmed.

DECISION

The Claimant failed to file for benefits in a timely manner accordance with Section 4(b) of the Maryland Unemployment Insurance Law. The Claimant is disqualified from receiving benefits from December 24, 1989 until January 27, 1990

The determination of Claims Examiner is affirmed.



Gail Smith
Hearing Examiner

Date of Hearing: 2/15/90
ps/Specialist ID: 40323
Cassette No: 1394
Copies mailed on 2/26/90 to:

Claimant
Unemployment Insurance - Eastpoint (MABS)