



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.:	898-BR-91	
	Date:	July 26, 1991	
Claimant:	Cynthia K. Russo	Appeal No.:	9104837
		S. S. No.:	
Employer:	Fawn Grove Christian Academy	L.O. No.:	50
		Appellant:	EMPLOYER

Issue:

Whether the claimant performed services in employment covered by the provisions of Section 20(g) 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

August, 25, 1991

— 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 Supreme Court has ruled that schools having no legal identity separate from a church are exempt from unemployment taxation. St. Martin Evangelical Lutheran Church v. South Dakota, 449 U.S. 950, 101 S. Ct. 2142 (1981). The determining factor to be considered in this case is whether or not Fawn Grove Christian Academy has a legal identity separate from the Fawn Grove Church of the Nazarene.

The Board of Appeals concludes that the Fawn Grove Christian Academy does not have a legal identity separate from the Fawn Grove Church of the Nazarene. This conclusion is supported by the following facts.

The academy was created by the Church Board in 1984. The Academy and the Church share the same tax number. The Academy is not separately incorporated. Lacking separate incorporation, the Academy is not a legal identity separate from the Church. The Academy is a part of the Church.

The claimant therefore, performed services for this school which were not covered employment under Section 20(g)(7)(v)(B) of the Maryland Unemployment Insurance Law. This being the case, the claimant's earnings cannot be used to make a monetary determination within the meaning of Sections 20(g) and 3(b)(1) of the Law.

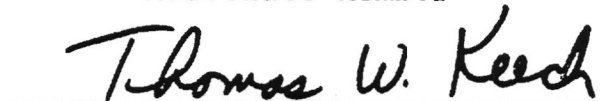
DECISION

The claimant did not work under covered employment and her earnings cannot be used to make a monetary determination within the meaning of Sections 20(g) and 3(b)(1) of the law.

The decision of the Hearing Examiner is reversed.



Associate Member



Chairman

D:K
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CLAIMANT
EMPLOYER
OUT-OF-STATE CLAIMS

 **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

— D E C I S I O N —

Date: Mailed: 5/29/91
Date: _____
Appeal No.: 9104837
S. S. No.: _____
Employer: Fawn Grove Christian Academy L.O No.: 50
Appellant: Employer

Issue: Whether the claimant worked in covered employment within the meaning of Section 20(g) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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

6/13/91

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present
Robert Russo, Claimant's Husband

FOR THE EMPLOYER:

Pastor John Cramer
Nancy Fuller,
Assistant Treasurer

FINDINGS OF FACT

The claimant has a benefit year effective October 21, 1990. She was last employed with Fawn Grove Christian Academy of Pylesville, Maryland on September 1, 1988. She was performing duties as a Third and Fourth Grades Teacher at \$5.325 cents per

hour at the time of her separation on June 15, 1990.

The testimony reveals that the claimant served as a Teacher through the academic years of 1988 to 1989 and 1989 to 1990. Her employment with Fawn Grove Christian Academy ceased at the end of the academic year on June 15, 1990.

Fawn Grove Christian Academy was organized to provide parents with a school for the education of their children in a matter consistent with the teaching of the Bible and to provide a Christian alternative to public education. The school is physically located within the church facilities and the Sunday school rooms are used as rooms for educating the youth.

The children pay a tuition and some money for the academy comes through church contribution, although there is not a separate line in the church budget for the academy. The church has its own budget and so does the academy. The church also has their own Board of Directors and the academy have a separate Board of Directors although the pastor is required to be the Chairman of the Board of the academy. He is also the one who hires the president of the academy. The School Board consists of no fewer than seven members of the church with the pastor being the chairman of the school board.

Teachers, however, are not required to be members of the church and there are four full-time teachers, none of whom are members of the church. There are also three full-time aides of which only one is a member of the church. In addition to having their own separate boards, the church and the academy also have their own separate books although they do share the same tax number. The school also provides for the licensing and the insuring of the church vehicles which are used by the academy. They also assume the responsibility of repairing these vehicles.

The children are taught Reading, Math, Languages, Social Studies, Art and Music, but they also have one-half hour each day of religious teaching which is taught by the teachers as well as by the children themselves who sort of designed their own religious program for this one-half hour. The educational aspect of the teaching day is designed and programmed by the State of Maryland Educational System.

The claimant is not a member of the church of the Nazarene and is qualified to teach by having a Bachelor and Masters Degree of Education. Her contract of teaching was with the academy and her paychecks are from the Academy as well as her W-2 form.

CCNCLUSIONS OF LAW

It is concluded from the testimony that the Fawn Grove Christian Academy is clearly not a church even though the directors of the corporation are from a particular religious order.

In determining whether the church-affiliated schools are operated primarily for religious purposes, consideration should be given to the relationship between the affiliation with the Church and the institutional academy including composition of the governing board, degree of supervision by the church, and sources of financial support. Consideration should also be given to the extent of religious and doctriation, prayer in the classroom, religious or theology classes, degree of intellectual freedom in non-theological classes, composition of the faculty and the degree of the academic freedom. Employment Security Administration v. Baltimore Lutheran High School Association, Inc. et al., 291 Md. 750, 436 A2nd 481, 487 (1981).

In Georgetown Preparatory School, 10-EA-82, the Board considered what the primary purpose of the institution was and in the particular case it is concluded that it was for educational purposes. Also, the formal religious classes constitute only one-half hour of each day, and in this instant case, the teachers were not members of the church. This left the majority of the teacher's time teaching non-religious (secular subjects) designed to prepare students for further educational endeavors.

Therefore, it is concluded that the services performed by this claimant for this school are covered employment under Section 20(g)(7)(v)(B) of the Maryland Unemployment Insurance Law. This case will be remanded back to the local office for a calculation of the monetary eligibility period. The determination of the Claims Examiner under Section 20(g) of the Law, therefore, is reversed.

DECISION

The claimant did work under covered employment and her earnings can be used to make a monetary determination within the meaning of Section 20(g) and 3(b)(1) of the Law.

The determination of the Claims Examiner is reversed.

This case is referred back to the local office for a monetary eligibility determination under Section 3(b)(1) of the Law.



William R. Merriman
Chief Hearing Examiner

Date of hearing: 5/10/91
rc/Specialist ID: 50504
Cassette Number (4744 & 4745)
Copies mailed on 5/29/91 to:

Claimant
Employer
Unemployment Insurance - Bel Air - MABS