

 **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.:	1224 -BH-92	
	Date:	July 28, 1992	
Claimant:	Kathy M. Ready	Appeal No.:	92-EB-146
		S. S. No.:	
Employer:		L O. No.:	002
		Appellant:	CLAIMANT

Issue: Whether the claimant failed to make a systematic and sustained search for work as required by Section 8-1104 of the Labor and Employment Article and whether the claimant had good cause for filing a late request to re-open her dismissed case and good cause for re-opening her dismissed case, within the meaning of COMAR 24.02.06.02.

— 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

August 27, 1992

— APPEARANCES —

FOR THE CLAIMANT:

Kathy Ready, Claimant

FOR THE EMPLOYER:

John T. McGucken, Legal Counsel, D.E.E.D.

EVALUATION OF THE 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 the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file. The Board finds the claimant's testimony to be very credible.

FINDINGS OF FACT

The claimant originally filed for unemployment insurance benefits, with a benefit year beginning January 6, 1991. She received all her benefits.

There came a time when the claimant was admitted into a rehabilitation program and was hospitalized at The Meadows from November 14, 1991 until December 11, 1991. After she was released, she was still unable to look for work for several weeks, until on or about January 9, 1992. In the meantime, she had received notice from the agency that she was eligible to apply for emergency unemployment benefits. Therefore, on January 9, 1992, she reported to her local office and filed for emergency benefits. She was able to work and actively seeking work as of that date.

For reasons that are not clear from the record, when the claimant applied for those emergency benefits, the agency personnel who took her claim filed back-dated claims for the claimant for several weeks immediately preceding the week of January 9, 1992. However since the claimant had not sought work for those weeks, she was then disqualified for having failed to make a systematic and sustained search.

The claimant appealed that disqualification and a hearing before hearing examiner Hackett was scheduled for February 21, 1992. The claimant was on her way to that hearing but she missed the bus and since she had no other way of getting to the hearing on time, she returned home and immediately called the hearing examiner. The hearing examiner told her to wait until she got the dismissal notice and then request a reopening. Unfortunately, and through no fault of the claimant, by the time she received the dismissal notice the seven day time period for requesting a reopening has lapsed. She again called the appeals division and was told to send in her request and note the late receipt of the dismissal in her letter. The claimant did as instructed but her request was turned down for being late.

It is the appeal of that denial that is before the Board.

CONCLUSIONS OF LAW

Based on the credible testimony of the claimant, the Board concludes that she had good cause both for filing a late request to reopen and good cause to reopen her appeal. The claimant's reason for failing to appear at the hearing below constitutes good cause. Further, the claimant contacted the appeals division as soon as she was able and followed all instructions given her. She also filed her request as soon as she received the dismissal notice. Therefore, the Board will reverse the ruling of the Chief Hearing Examiner and reach a decision on the merits of this case.

The Board concludes that the claimant did make a systematic and sustained search for work, from the time that she applied for emergency benefits. The claimant's unrefuted testimony is that as of Thursday, January 9, 1992, she was able, available and actively seeking work. Since she did not apply for the benefits until that date, the Board finds that she should not be penalized for her failure to seek work prior to that date. Her search for work on Thursday, January 9, 1992 and Friday, January 10, 1992 is sufficient to meet the requirements of the statute for the week beginning January 5, 1992.¹

Further, the claimant should not be penalized for not being able to work during weeks for which she never even intended to apply for benefits. Therefore, the claimant's disqualification from December 15, 1991 through January 4, 1992 will also be reversed.

DECISION

The claimant had good cause for filing a late request for reopening of her appeal and had good cause for requesting a reopening of her case.

The claimant made a systematic and sustained search for work as required by section 8-1104 of the Labor and Employment Article. The claimant is eligible for emergency benefits beginning January 5, 1992.

The claimant did not apply for emergency benefits prior to the week of January 5, 1992. Therefore, the disqualification for

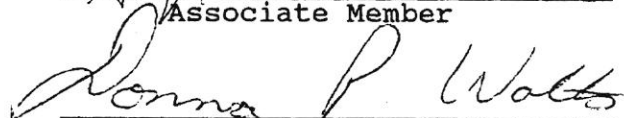
¹If the claimant had applied for emergency benefits at the beginning of this week, then she would have had to show that she was making a systematic and sustained search throughout the week. However, since she did not attempt to file until she knew she was able to look for work, the Board does not believe that she should be penalized for events that occurred prior to her filing for benefits.

the weeks beginning December 15, 1991 through January 4, 1991
is reversed.


The decision of the Chief Hearing Examiner and the Claims
Examiner is reversed.



Associate Member



Associate Member



Chairman

H:D:K

ubm

Date of Hearing: July 7, 1992

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - GLEN BURNIE

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary
1100 North Eutaw Street
Baltimore, Maryland 21201

Date: March 12, 1992

Kathy M. Ready

Re: Kathy M. Ready

v.

D E E D

Appeal No: 9200146


SS No:

NOTICE OF ACTION TAKEN ON PETITION TO REOPEN

A petition for reopening has been filed in the above-captioned appeal, a case previously dismissed under the Code of Maryland Regulations, (COMAR) Title 24.02.06.02M.

COMAR, Title 24.02 .06.02(N) (5)(a) provides that such a petition for reopening shall be delivered or postmarked within seven (7) days following the date the dismissal was mailed to the last known address of the petitioner. The petition as filed does not meet this standard and reopening is denied.

COMAR, Title 24.02 .06.02(N) (5)(c) provides that a decision not to reopen a dismissed appeal is appealable to the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, Maryland 21201. The petitioner has fifteen (15) days from the date of the mailing of this notice to file a timely Appeals.



Louis Wm. Steinwedel
Chief Hearing Examiner

LWS/rc

cc: