

- DECISION -

Claimant:	Decision No.:	1278-BR-12
SHARONDA HARPER	Date:	March 14, 2012
	Appeal No.:	1111675
Employer:	S.S. No.:	
	L.O. No.:	60
	Appellant:	CLAIMANT - REMAND FROM COURT

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: April 13, 2012

REVIEW OF THE RECORD

Pursuant to the Order of the Circuit Court for Baltimore City and after a review of the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion of law and a modification of the hearing examiner's decision.

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)*.

Because the claimant prevailed on the late appeal issue, and because that issue was not appealed to the Board, the Board need not address that issue.

Pursuant to *COMAR 09.32.02.04B(5)(a)*, the claimant could timely file a continued claim for benefits within 14 days for which benefits are claimed. Pursuant to the *DLLR* website

To be considered timely, your continued claim must be filed within 14 days from the Saturday of the most recent week for which you are requesting benefits.

Example:

In order to file a timely continued claim for the weeks ending March 5, 2011 and March 12, 2011, you must file by telephone or internet by March 26, 2011. If you do not, when you file you will receive a message that says: "Our records show that you are attempting to file an untimely claim. Please call an [Unemployment Insurance Claim Center](#) if you feel that you should be filing a claim."

Benefits for weeks that are not filed on time will be denied according to unemployment insurance law and regulations. Any claims for weeks between the first untimely week and the date you contact DUI to reopen your claim will also be denied.

See <http://www.dllr.state.md.us/employment/claimfaq.shtml>

The claimant reopened her claim on February 14, 2011. The Board finds that the claimant timely filed for benefits for the week beginning January 23, 2011 through the week ending January 29, 2011 and for the week beginning January 30, 2011 through the week ending February 5, 2011. The claimant had until February 19, 2011 to file a claim for these two benefit weeks. The hearing examiner's decision shall be modified accordingly.

DECISION

THE BOARD HOLDS that the claimant did not file a timely claim for the week beginning January 9, 2011 through the week ending January 22, 2011. Benefits are not allowed for this period.

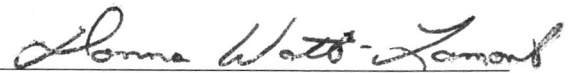
However, the Board holds that the claimant filed a timely claim for benefits from the week beginning January 23, 2011 through the week ending February 5, 2011. Benefits are allowed during this period,

provided the claimant meets the other requirements of the law.

The hearing examiner's decision is modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

SHARONDA HARPER

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHARONDA HARPER

SSN #

Claimant

vs.

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: 1111675

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

April 21, 2011

For the Claimant: PRESENT

For the Employer:

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. 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 parties in this case, specifically, the claimant, Sharonda Harper. The determination had an appeal deadline of March 15, 2011. In this case, the appeal was filed by facsimile on March 24, 2011. The claimant acknowledged that she received the adverse benefit determination and was aware of the appeal deadline date. The claimant initially mailed her letter of appeal on March 13, 2011. For reasons unknown, this letter was apparently never received by the Agency. The claimant then sent a second letter of appeal via facsimile on March 24, 2011.

The claimant established a benefit year beginning July 13, 2009, with a weekly benefit amount of \$78.00. The local office determined that the claimant failed to file continued claims in a timely manner. Since all continued claims must be filed in a timely manner in accordance with Section 8-901 of the Maryland

Unemployment Insurance law, benefits were denied. The claimant did not file continued claims for the four week period of January 9, 2011, through February 5, 2011. The claimant had "a lot going on," and simply forgot to file her claims for benefits. The claimant characterized her failure to file as "an honest mistake" and not an intentional act on her part. The claimant reopened her claim on February 14, 2011.

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).

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 09.32.02.04B(5)(a) provides that "continued claims shall be filed and received within 14 days in order to be timely, if the claimant is currently filing continued claims. Continued claims filed more than 2 weeks late shall be considered timely only if the Department's error caused the claimant not to receive the claim forms ..."

Under Article 94, Section 2 of the Annotated Code of Maryland, when the last day of a period of time prescribed by any statute falls on a Sunday or legal holiday, the period of time runs until the end of the next day, which is neither a Sunday nor a holiday.

COMAR 09.32.02.04B(5)(c) provides that a claimant who fails to file a timely continuing claim shall file an initial or re-opened claim as instructed in COMAR 09.32.02.03C of this chapter to reactivate the claim. A continued claim filed after filing an untimely claim but before reactivating the claim shall be denied.

EVALUATION OF THE EVIDENCE

Although duly notified, the Agency failed to be present at the hearing to provide testimony in this matter. The credible testimony presented at the hearing

In the instant case, the claimant filed a late appeal within the meaning of Section 8-806. The appeal was tendered on March 24, 2011, 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 sent in her letter of appeal in a timely fashion; however it was not received by the Agency. The letter received on March 24, 2011, was

actually the second letter of appeal sent by the claimant. Thus, the claimant has shown due diligence in pursuing her appeal rights and the late-filed appeal will be permitted.

The credible testimony presented at the hearing indicates that the claimant did not file continued claims for benefits in a timely fashion for the four week period beginning January 9, 2011, through February 5, 2011. The claimant testified that she had 'a lot' going on at that point and that she made an honest mistake in forgetting to file her claims. While the Hearing Examiner found the claimant's testimony in this matter to be credible, Maryland Law provides that Continued claims filed more than 2 weeks late shall be considered timely only if the Department's error caused the claimant not to receive the claim forms ..." No evidence was presented in this case to show that the claimant's late filing was attributable to Agency error. Accordingly, benefits must be denied for the four week period in question.

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 filed untimely claims for the week beginning January 9, 2011, and through February 5, 2011, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 and COMAR 09.32.02.04B(5). Benefits are disallowed for that period. The claimant may IT contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is affirmed.



R M Liberatore, 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 May 06, 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 : April 15,2011
CH/Specialist ID: UTW2T
Seq No: 004
Copies mailed on April 21, 2011 to:
SHARONDA HARPER
LOCAL OFFICE #60
SUSAN BASS DLLR