



DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383-5032

— DECISION —

STATE OF MARYLAND

HARRY HUGHES  
Governor

KALMAN R. HETTLEMAN  
Secretary

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

MAURICE E DILL  
HAZEL A. WARNICK  
Associate Members

SEVERNE LANIER  
Appeals Counsel

DECISION NO.: 1356 -BR-82

DATE: September 22, 1982

APPEAL NO.: 03971

S. S. NO.:

CLAIMANT: Esther C. Cuff

EMPLOYER: Chesapeake Plywood

L. O NO.: 26

APPELLANT: AGENCY

ISSUE Whether the Claimant was able to work, available for work, and actively seeking work within the meaning of Section 4(c) 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 SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT October 22, 1982

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon the a review of the record in this case, the Board of Appeals disagrees with the conclusions of the Appeal Referee. The decision of the Appeals Referee will be reversed.

The Board finds the following facts. The Claimant was employed by the Chesapeake plywood company for three years as a forklift operator earning \$5.86 an hour. The Claimant filed a claim for unemployment compensation benefits and also worked part-time for this employer at whatever hours were available.

On Monday, February 15, 1982, the Claimant reported for work. After working approximately half an hour, the Claimant felt ill, and returned home with her employer's permission. The Claimant was able to work again by the next day, but no work was available at Chesapeake Plywood throughout the rest of the week ending February 20, 1982. The Claimant earned only approximately \$2.90 for the half hour she worked on February 15. Had the Claimant been able to work the entire day the Claimant would have earned approximately \$46.00.

#### CONCLUSIONS OF LAW

The Appeals Referee ordered the Agency to, in effect, invent fictitious wages of \$.43.00, and to pay the Claimant reduced partial benefits as if she had earned a total of \$46.00 during the week in question.

In the DeVore case, 1053-FH-82, the Board of Appeals agreed with the Agency's position that the Agency has no authority to invent fictitious wages. The Board concluded in that case, although it may be equitable to invent fictitious wages for one day in order to correspond to a day of available work which a Claimant did not take advantage of, the law requires a decision, with regard to each particular week, to whether the Claimant was available or not available for work within the meaning of Section 4(c) of the Law.

Section 4(c) of the Law, of course, does not speak with such specificity so as to clearly mandate a result one way or the other in this case.

Aside from the statute itself, which, as we have seen, does not speak with enough particularity so as to resolve this problem, the only mandatory guideline which even remotely applies to this situation is COMAR 07.04.02.04 F. This section states that a partially employed individual is eligible for benefits only if the individual is willing to accept additional hours of suitable work or full time work.

While we do not doubt the wisdom of this regulation, it simply does not apply to this case. The regulation clearly means to disqualify from partial benefits those persons who voluntarily work part time and who will not accept additional hours of work or full time work.

The situation in this case is completely different. In this case, the Claimant was clearly willing to accept additional hours of work, but the work was not available to her. The hours of work she missed on Monday were not due at all to an unwillingness to accept additional hours, but to the fact that she became ill after reporting to work. Since the Claimant was willing to accept additional hours for work, this regulation has no application in this case.

The question then remains what is the effect of the Claimant becoming ill after working one half hour on Monday.

First, it should be noted that, if the Claimant had been ill during the entire week, she could have filed a "sick claim" under Section 4(c) and COMAR 07.04.02.03 H. If, however, the Claimant, after filing a sick claim, had been offered work which would have been suitable but for his or her illness, the Claimant would have been disqualified from the receipt of benefits until she was once again able to work. COMAR 07.04:02.03 H (3).

In applying these provisions to this case, the Board concludes that the purpose of the sick claim provision is to protect claimants from being Penalized. for being disabled, so long as the disability does not cause them to turn down offers of work.

These sick claim provisions are thus inapplicable to this case. This Claimant held the same part time job before, during and after the week in Question. She was sick-for the greater part of one day only; she was able to work the rest of the week. She did not turn down work or "fail to apply for or accept" work within the meaning of the regulation cited above.

Thus there is no statutory or regulatory basis for the imposition of a penalty in this case, unless 'the general language of Section 4(C) (generally concerned with, being able to work, available for work and actively seeking work.) justifies the penalty. The Board concludes that it does not. The Claimant was ill for the greater part of one day, but she was able to work the rest of the week. She was available for work at any time except the hours when she was sick. No evidence was presented that she was not seeking work. The Board will not conclude that being sick the greater part of one day disqualifies a person for benefits for the entire week under Section 4(c) of the Law.

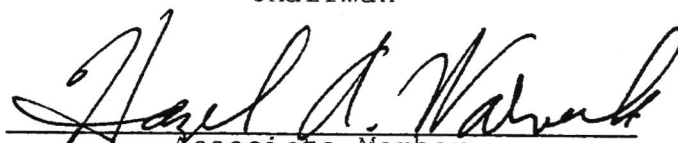
Of course, the failure to work all available hours may well indicate unavailability or unwillingness to work to an extent sufficient to disqualify a person under Section 4(c), but the Board concludes that isolated fortuitous incidents, such as the Claimant being one hour late for work on one occasion, see, the DeVore case, 1053-BH-82, or the Claimant becoming ill after reporting to work on one day, do not establish, in and of themselves, unavailability for work for the entire week.

since the Agency and the Board do not have the authority to reduce the Claimant's benefits by the amount the Claimant would have earned on Monday (since to do so would be to invent fictitious earnings), a decision must be made either disqualifying the Claimant for the whole week or finding her eligible for the whole week. Since there is no basis in law for disqualifying the Claimant for the entire week, the Claimant will be found eligible for benefits during the week in question.

DECISION

The Claimant is not disqualified for benefits for the week ending February 20, 1982. The decision of the Appeals Referee is reversed.

  
Chairman

  
Associate Member

  
Associate Member

K:W:D  
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Maurice C. Ashley - T. I. Director

John Zen - Legal Counsel

UNEMPLOYMENT INSURANCE - CRISFIELD



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383 - 5040

BOARD OF APPEALS

JOHN J. KENT  
 Chairman  
 HENRY G. SPECTOR  
 HAZEL A. WARNICK  
 Associate Members

SEVERN E. LANIER  
 Appeals Counsel

GARY SMITH  
 Chief Hearings Officer

- DECISION -

CLAIMANT: Esther C. Cuff

DATE: 5/25/82

APPEAL NO.: 03971

S. S. NO.:

EMPLOYER: Chesapeake Plywood

LO. NO.: 26

APPELLANT: Claimant

ISSUE: Whether the claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

June 9, 1982

-APPEARANCES -

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

W.S. Dix,  
 Administrative  
 Manager  
 Sharon Comegags,  
 Claim Specialist

FINDINGS OF FACT

The claimant was employed by Chesapeake Plywood as a Forklift Operator for three years earning \$5.86 an hour.

On February 15, 1982 the claimant reported for work. However, the claimant felt ill and with the employer's permission left after only working one half hour. During part of the week there

was a lay-off for lack of work. As a result of the claimant not working the following February 15, 1982 the claimant was disqualified for the entire week ending February 20, 1982.

For the day February 15, 1982 the claimant could have earned \$46 had she worked the entire day but as a result of only working one and a half hour earned \$2.93 or rounding out to \$3.

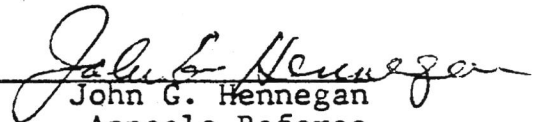
The claimant was able to work the balance of the week;

#### CONCLUSIONS OF LAW

Because the claimant was ill she could not work the full day available to her for the week that she was unemployed, it is the Appeals Referee feeling that the claimant should not be penalized for the entire week from receiving Unemployment Insurance Benefits because her missing the majority of the day for illness. However, had the claimant worked that day she would have earned \$46 instead of the \$3 that she did earn. It is the Appeals Referee decision that the claimant should receive her weekly benefit amount \$43 as a partial payment as the other employees in the same situation of the claimant would have done.

#### DECISION

The claimant was not able and available for full-time work within the meaning of the Maryland Unemployment Insurance Law. She is entitled to her weekly benefit amount of \$43 if otherwise eligible under the Law.

  
John G. Hennegan  
Appeals Referee

Date of Hearing: 4/13/82

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Copies mailed to:

Claimant  
Employer  
Unemployment Insurance - Crisfield