



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor

**DEPARTMENT OF HUMAN RESOURCES**

**EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201

383-5032  
 - DECISION -

BOARD OF APPEALS  
 THOMAS W KEECH  
 Chairman

HAZEL A WARNICK  
 MAURICE E DILL  
 Associate Members

SEVERN E LANIER  
 Appeals Counsel

CLAIMANT: Clement F. Helmstetter

DECISION NO.: 1507-RR-82

DATE: October 15, 1982

APPEAL NO.: UFC-221

S.S.NO.:

EMPLOYER: United States Postal Services

L.O.NO.: 3

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant is 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 MAY BE 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

November 14, 1982

**- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

**REVIEW ON THE RECORD**

Upon a review of the record in this case, the Board of Appeals disagrees with the facts found and conclusions of law of the Appeals Referee and reverses that decision.

#### FINDINGS OF FACT

The Claimant was laid off from his job with the Mashuda Corporation in Evans City, Pennsylvania, on August 14, 1981. Subsequently he file for unemployment insurance benefits, effective November 15, 1981, with a weekly benefit amount of \$140.00. The record before the Board does not indicate how many weeks of benefits he actually received.

On February 20, 1982, the Claimant obtained employment with the United States Postal Service as a rural carrier relief employee and at the time of the hearing before the Appeals Referee, he still had that position. A rural carrier relief employee is basically a part time job. The Claimant is on call and is scheduled for work when another employee is absent or on leave, similar to a substitute teacher. Therefore, the number of hours the Claimant works and the amount of his earnings in any given week will vary. Although the record is devoid of any specific information regarding the Claimant's wages, it is presumed that at least for some of the the weeks, his earnings fall below his weekly benefit amount.

Further, the Claimant has stated (to the Claims Examiner) and there is no evidence to the contrary, that he is able and available for full time work.

#### CONCLUSIONS OF LAW

The Board of Appeals concludes that the Claimant meets the requirements of Section 20(1) of the Maryland Unemployment Insurance Law for: "...any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount plus allowances for dependents."

The Claimant's employment with the Postal Service, for each week in which he earns less than his weekly benefit amount, is precisely the situation set out in Section 20(1). Clearly, the intent of the Law is to encourage a person to work, even if part time work is the only work available to him, by allowing him to collect the difference between his weekly benefit amount and his earnings, in unemployment insurance benefits.

The fact that the Claimant is not "separated" from the Postal Service, a fact upon which the Employer and the Appeals Referee placed great importance, is totally beside the point. Section 20(1) clearly provides that a Claimant may be eligible for partial benefits even if he is working a part time job (and therefore obviously not separated from that employment). The Board notes that the United States Postal Service does not appear to be a base period employer and as such, would not be charged

for the Claimant's benefits, based on his benefit year effective November 15, 1981.

The Claimant was also found by the Appeals Referee to be disqualified because he was not able and available for work, without restrictions, within the meaning of Section 4(c). This conclusion is contrary to the intent of the law and is unsupported by the evidence in the case.

The sole basis for disqualifying the Claimant under Section 4(c) was his continuing on-call employment as a relief carrier with the Postal Service. Obviously, the law was not intended to punish people who are otherwise able, available and actively seeking full time work, merely because they accept part-time work, rather than remain idle. Although no testimony was elicited on this issue at the hearing before the Appeals Referee, the Claimant signed statement, taken by the Claims Examiner was that he was able and available for full time work, despite the fact that he was on-call for the Postal Service. Absent any evidence to the contrary, the Board accepts that statement as correct.

Therefore, to accept the reasoning of the Appeals Referee would amount to requiring the Claimant to quit his job with the Postal Service in order to be eligible under Section 4(c) of the Law. Aside from the obvious absurdity of that situation, such a requirement would force the Claimant to voluntarily quit his job (possibly giving him a penalty under Section 6(a)) or, if he had not accepted the job in the first place, would subject the Claimant to being disqualified for refusing an offer of suitable work, within the meaning of Section 6(d) of the Law. In any event, as the Board stated earlier in this decision, the clear intent of the statute is to encourage people to work, even part time, if that is all that is available, and to provide partial benefits, where appropriate, as long as they are still able and available for full time work.

#### DECISION

The Claimant is unemployed within the meaning of Sections 4 and 20(1) of the Law for any week of less than full time work, if the wages payable to him with respect to such work are less than his weekly benefit amount plus allowances for dependents. This case is remanded to the local office, which is instructed to make a determination for each week the Claimant filed a proper claim, in accord with this decision.

The Claimant is able, available and actively seeking work, within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. The disqualification from August 19, 1982, imposed by the Appeals Referee, is rescinded.

The decision of the Appeals Referee is reversed.

  
Associate Member

  
Associate Member

W:D  
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

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BOARD OF APPEALS  
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 MARK R WOLF  
 Administrative  
 Hearings Examiner

- DECISION -

CLAIMANT: Clement F. Helmstetter  
 DATE: August 31, 1982  
 APPEAL NO.: UCF-221-EP  
 S. S. NO.:  
 EMPLOYER: United States Postal Service  
 L. O. NO.: 3  
 APPELLANT: Employer

ISSUE: Whether the claimant is able to work, available for work 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 MAY BE 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 September 15, 1982

-APPEARANCES-

FOR THE CLAIMANT:

Clement F. Helmstetter - Claimant

FOR THE EMPLOYER:

William B. Orendorff -  
 Postmaster of Cumberland

FINDINGS OF FACT

The claimant had been previously employed by the Mashuda Corporation in Evans City, Pennsylvania as a tractor trailer driver. He was separated from this employment for reasons of lack of work on September 14, 1981. The claimant began employment with the Postal Service on February 20, 1982 in the capacity of a rural carrier relief employee. In this capacity, he worked as scheduled when another employee was on leave or otherwise absent. The claimant has been performing such services since the 20th of February, 1982 and most recently performed such services on August 17, 1982.

CONCLUSIONS OF LAW

Section 4 of the Law provides that unemployment insurance benefits are payable to "unemployed" individuals. Section 20(1) of the Law defines unemployment. It provides:

"An individual shall be deemed 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount plus allowances for dependants."

In the instant case, it is evident that the claimant has not been separated from the employment with the United States Postal Service and has in fact performed services within the week in which his Appeal Hearing was held. Therefore, it cannot be held under the provisions of the Maryland Unemployment Insurance Law that the claimant has in fact been separated from employment.

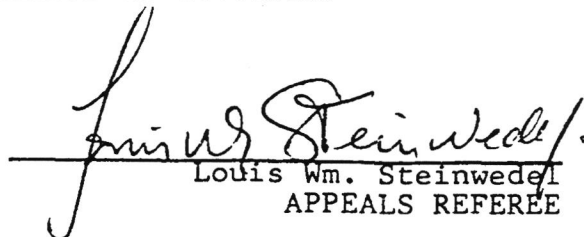
The claimant's continuing on-call employment by the United States Postal Service as a relief carrier, with services performed as recently as the week of his Appeal Hearing, operates as a restriction upon his availability for work. (See Robinson v. Employment Security Board, 202 Md. 515). Therefore, the claimant cannot be held to be meeting the eligibility requirements of Section 4(c) of the Law.

DECISION

It is held that the claimant is not unemployed within the meaning of Sections 4 and 20(1) of the Maryland Unemployment insurance Law.

It is held that the claimant is not meeting the availability requirements of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied from August 19, 1982 (the date of the hearing) and until such time as he is fully available for work, without restriction.

The determination of the Claims Examiner is reversed.

  
Louis Wm. Steinwedel  
APPEALS REFEREE

DATE OF HEARING: August 19, 1982

ras

(4781 --- Dudley, Jr.)

copies mailed to:

Claimant

Employer

Unemployment Insurance - Cumberland