



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

STATE OF MARYLAND  
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

STATE OF MARYLAND  
HARRY HUGHES  
Governor

DECISION NO.: 181-BH-84

DATE: February 17, 1984

CLAIMANT: William Nachand

APPEAL NO.: 04482

S. S. NO.:

EMPLOYER:

L.O. NO.: 12

APPELLANT: CLAIMANT

ISSUE: Whether the claimant is unemployed within the meaning of §20(1) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE. -

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

March 18, 1984

**—APPEARANCE—**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

William Nachand - Claimant  
Robert E. Farnell, III. Attorney

DEPARTMENT OF EMPLOYMENT & TRAINING  
John Roberts - Special Counsel

**EVIDENCE CONSIDERED**

The Board of Appeals has considered all of the documentary evidence presented and the testimony offered at the hearings. The Board has also considered the Department of Employment & Training's documents contained in the appeal file.

## FINDINGS OF FACT

The claimant was president and owner of a corporation known as Nachand & Mercogliano, Inc.. Since early in 1982 the claimant had been the sole owner.

The business conducted by the claimant consisted of the manufacture and sale of water pipes to be used for smoking through water. In addition to himself, there were two other employees engaged in the corporation business. One employee was a full-time employee; the other was part-time. The claimant earned a salary which began at approximately \$200.00 per week. At the time the corporation went out of business his salary, was approximately \$700.00 per week. The full-time employee was earning \$5.46 per hour and the part-time employee was earning \$4.00 per hour at the time the corporate business ceased.

The claimant was the owner and ran the corporation. He did all the physical work that was necessary in running the business and, in addition, he supplied the management and supervision for the operation. He decided what his salary was and also the hourly rate of the two other employees.

On March 7, 1983, the local police raided the corporate business and confiscated all of the business assets. The claimant was charged and arrested for manufacture and sale of illegal products. As a result of the police raid and seizure and corporation assets, the corporation was forced to close down and was unable to carry on any business. Criminal charges were placed against the claimant, but these charges were eventually dropped.

For the period from March 7, 1983 until the week beginning August 21, 1983, the claimant actively sought employment in the Salisbury, Maryland area. He was unable to find work. He felt that his lack of success in obtaining employment was due to the adverse publicity he received through the raid of his corporation and the criminal charges brought against him. Since he felt the publicity concerning his business and himself seriously hampered the possibilities of his obtaining a job in the area in which he was located, the claimant moved to Clearwater, Florida during the week of August 25, 1983.

At the present time, the local authorities have filed civil proceedings against the corporation and the claimant to obtain legal possession of the merchandise seized by the police department in the raid which was conducted on March 7, 1983.

## CONCLUSIONS OF LAW

During the period for which proper claims were filed by the claimant, the claimant was unemployed within the meaning of §20(1) of the Maryland Unemployment Insurance Law.

In this case, the claimant was president of a corporation which manufactured and sold merchandise which was at one time legal. Due to a change in the law, the manufacture and sale of this merchandise became illegal. As a result of police action to enforce the new law, the claimant's corporation was raided and the claimant was arrested. The corporation assets were seized by the state. As a result, the corporation was unable to conduct business.

Any action taken by the claimant after his arrest and after the business closed, was not in furtherance of the corporate business but for his own protection, since he was criminally charged and the corporation was not. All evidence considered, the claimant performed no services for the corporation after the raid of March 7, 1983.

In the Fourtinakis case, Board Decision No. 870-BH-81, the Board of Appeals ruled that the test of whether the person meets the definition of §20(1) of the law is whether that individual has performed services with respect to which wages are paid or payable. In the Gleason case, Board Decision No. 1033-BH-81, the Board held that there is no special exception to this rule for corporate officers. The claimant in this case performed no services for which wages were payable during the period in which he filed claims. Under the circumstances, he clearly met the definition of unemployed in §20(1) of the Maryland Unemployment Insurance Law.


The claimant made an honest and active search for work in his own area (Salisbury, Maryland) during the period from March 8 until the week beginning August 21, 1983. At that time, the claimant left Maryland and moved to Florida and filed no further claims up to the time of the hearing. The claimant left the Salisbury, Maryland location because the publicity arising from the police raid on the corporation and the claimant's criminal charges were adversely affecting his employment possibilities. Under the circumstances, the claimant was able, available and actively seeking work within the meaning of §4(c) of the Maryland Unemployment Insurance Law for the period prior to leaving the state of Maryland.

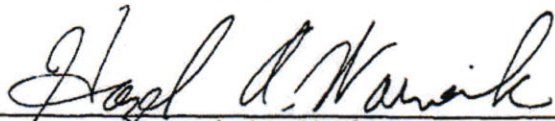
## DECISION

The claimant is not disqualified from receiving benefits under §20(1) of the Maryland Unemployment Insurance Law.

The claimant was able, available and actively seeking work within the meaning of §4(c) of the Maryland Unemployment Insurance Law. He is eligible for benefits from the week beginning March 6, 1983 to the week beginning July 31, 1983.

The decision of the Appeals Referee is reversed.

  
Chairman

  
Associate Member

K:W  
kmb.

DATE OF HEARING: January 19, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Robert E. Farnell, 111, Esquire

John Roberts - Special Counsel

UNEMPLOYMENT INSURANCE - SALISBURY



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 - 3040

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

MAURICE E. DILL  
HAZEL A. WARNICK  
Associate Members

EVERN E. LANIER  
Appeals Counsel

MARK R. WOLF  
Administrative  
Hearings Examiner

- DECISION -

DATE: August 19, 1983

APPEAL NO.: 04482

S. S. NO.:

L. O. NO.: 12

APPELLANT: Claimant

CLAIMANT: William Nachand

EMPLOYER:

ISSUE: Whether the claimant was discharged for gross misconduct connect-  
ed with his work within the meaning of Section 6(b) of the Law.  
Whether the claimant is unemployed within the meaning of Section  
20(1) of the Law.

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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 6, 1983

-APPEARANCES -

FOR THE CLAIMANT:

William Nachand - Claimant  
Robert E. Farnell, III - Attorney

FOR THE EMPLOYER:

FINDINGS OF FACT

The claimant is the major stockholder of Nachand and Mercogliano, Inc. The claimant is also the president of this corporation. The claimant has been in this position since May 1, 1979. The claimant's last day of work was March 4, 1983.

The local police confiscated all of the claimant's merchandise because it could be used for the smoking and utilization of illegal substance. This was done in compliance with a local law. As a result of this confiscation, the claimant has been totally shut down. Presently and at the time of the hearing, the claimant was in the process of filing suit to recover the products from the local government.

#### CONCLUSIONS OF LAW

As the claimant is the owner of the corporation and the business, his separation from this employment cannot be gross misconduct connected with his work within the meaning of the Maryland Unemployment Insurance Law. Therefore, the determination of the Claims Examiner will be reversed.

The claimant being the owner of this business and is still being in litigation, the claimant cannot be considered unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law. Therefore, the determination of the Claims Examiner will be affirmed.

#### DECISION

The claimant was separated, but not for gross misconduct or misconduct connected with the work within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed, based on his separation from Nachand and Mercogliano, Inc.

The determination of the Claims Examiner is reversed.

The claimant is not unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law. The claimant is disqualified from March 4, 1983 and until unemployed.

Date OE hearing: 6/14/83  
amp/8312  
(Peterson)  
3562  
Copies mailed to:

Claimant  
Unemployment insurance - Salisbury

Robert E. Farnell, III, Esquire