

-DECISION-

Claimant:
MICHAEL R MCNALLY

Decision No.: 2073-BH-06

Date: September 27, 2006

Appeal No.: 0608902

Employer:

S.S. No.:

L.O. No.: 61

Appellant: Claimant

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: October 27, 2006

- APPEARANCES -

FOR THE CLAIMANT:

Present

AGENCY
Soretha Staten

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file. The Board finds the claimant credible.

FINDINGS OF FACT

The claimant filed for benefits on December 26, 2005 with a weekly benefit amount of \$180.00. The claimant was laid off for one week from April 10, 2006 to April 14, 2006. However, the claimant did not file for benefits until April 17, 2006. The claimant read instruction in the Agency pamphlet, "What You Should Know About Unemployment Insurance in Maryland, Rev. 5/01" and he reasonably understood the pamphlet to mean that he should not file until the following week. That is the sole reason why the claimant failed to file for benefits during the week in question.

The claimant read page 10 of the pamphlet. The Board notes that the pamphlet does not define "initial claims," "additional claims" and "continued claims". The pamphlet only provides claim instructions for continued claims. The claimant complied with these instructions.

CONCLUSIONS OF LAW

After reviewing the testimony of the claimant and in addition the reviewing of the Maryland Unemployment Insurance Pamphlet "What You Should Know About Unemployment Insurance in Maryland" the Board finds that the pamphlet does not give instructions as to how to properly file for initial claims, additional claims or reopening claims.

The claimant did follow the instruction on page 10 of the unemployment pamphlet which caused the claimant to file erroneously.

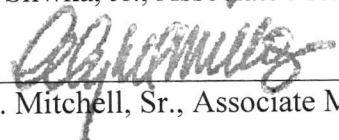
Unemployment compensation laws should be read liberally in favor of eligibility and disqualification provisions are to be strictly construed. *Sinai Hospital v. Department of Employment and Training* 309 Md. 28, 522 A. 2d 382 (1987). The Board finds that the claimant should not be denied benefits and that he complied with the Agency instructions provided to him, albeit incomplete instructions.

DECISION


IT IS HELD THAT the claimant filed a proper claim. The Agency instructions were silent in the pamphlet regarding the filing of additional claims. Therefore the Board finds for the claimant due to misleading or incomplete instructions. Benefits are allowed for week beginning April 9, 2006 to April 15, 2006.

The determination of the Hearing Examiner is reversed.

Francis E. Sliwka, Jr., Associate Member



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Date of hearing: September 19, 2006

Copies mailed to:

MICHAEL R. MCNALLY

SORETHA STATEN

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

MICHAEL R MCNALLY

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: 0608902

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

June 08, 2006

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.

FINDINGS OF FACT

The claimant filed for benefits on December 26, 2005 with a weekly benefit amount of \$180.00. The claimant was laid off for one week from April 10, 2006 to April 14, 2006. However, the claimant did not file for benefits until April 17, 2006. The claimant was confused as to when he should have filed for benefits. The claimant read through the pamphlet, and understood the pamphlet to mean that he should not file until the following week. That is the sole reason why the claimant failed to file for benefits during the week in question.

CONCLUSIONS OF LAW

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 09.32.02.03C(1) states that the effective date of an initial or reopened claim is the first day of the week in which an individual reports, registers and files the initial or reopened claim as instructed by the Secretary.

COMAR 09.32.02.03C(3) provides that the Secretary may direct that an initial or re-opened claim be filed:

- (a) By telephoning an office designated by the Secretary;
- (b) By electronic means, to a site designated by the Secretary;
- (c) By mailing, by first class mail, required documents to an office designated by the Secretary; or
- (d) In person, by reporting to an office designated by the Secretary.

A claim cannot be backdated unless it falls within one of the exceptions listed in COMAR 09.32.02.03(D).

COMAR 09.32.02.03(D) states that the effective date of an initial or reopened claim may be other than as provided in Section C of this regulation in the following situations:

(1) A claim may be backdated when a claimant reports partial earnings for week before the initial, to the Sunday of that week provided the claim is filed no later than:

- (a) 30 days immediately following the close of that week; or
- (b) 2 weeks after the date the partial wages are paid;

(2) A transitional claim shall be effective the date following the end of the preceding benefit year;

(3) Severe weather conditions exist, as declared by the Secretary;

(4) Clerical error attributable to the Department occurs;

(5) A local office is closed for a reason other than that the date is not a working day;

(6) A claim may be backdated when the claimant did not file a claim in reasonable reliance on an invalid agreement to waive, release, or commute the claimant's rights to benefits as prohibited by the Unemployment Insurance Law.

EVALUATION OF EVIDENCE

Maryland law allows for the backdating of claims in limited circumstances. The facts within this case unfolds in these rules. Therefore, the claim cannot be backdated.

DECISION

IT IS HELD THAT the claimant failed to file valid and proper claims for benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 and COMAR 09.32.02.04B. Benefits are denied for the week beginning April 9, 2006 and until the claimant files claims in accordance with the law.

The determination of the Claims Specialist is affirmed.

B Sapp, 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 the overpayment within 30 days from the date the overpayment is established. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. 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.

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 June 23, 2006. 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

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: June 05, 2006
DW/Specialist ID: WCP21
Seq No: 001
Copies mailed on June 08, 2006 to:
MICHAEL R. MCNALLY

LOCAL OFFICE #61