

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 273-BH-89
Date: April 7, 1989
Claimant: Kenneth English
Appeal No.: 8710607
S. S. No.:
Employer: Maryland Reception Center
c/o Dept. of Personnel
L. O. No.: 1
ellant: CLAIMANT

Issue: Whether the claimant was unemployed within the meaning of Section 20(1) of the law and whether the claimant received benefits while he was disqualified or otherwise ineligible for benefits within the meaning of Section 17(d) 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 CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON May 7, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Kenneth English - Claimant

FOR THE EMPLOYER:

Ernest Valt -
Personnel Off.
Mike Gallagher -
Chief - U. I.
Unit

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
John T. McGucken - Legal Counsel
Carol White

EVALUATION OF THE EVIDENCE

This case was remanded to the Board by the Circuit Court for Baltimore City for a hearing de nov because the cassette containing the testimony before the Hearing Examiner could not be located. In accordance with that order, a hearing was held by the Board of Appeals on January 24, 1989. The decision in this case, therefore, is based on the testimony taken and the evidence introduced at that hearing as well as any documentary evidence already in the record at that time.

FINDINGS OF FACT

The claimant had been employed by the Maryland Penitentiary as a correctional officer until he was suspended in August of 1986. He filed for unemployment insurance benefits with a benefit year beginning August 10, 1986 and received a weekly benefit amount of \$195.00 from the weeks ending August 16, 1986 through November 22, 1986.

Subsequently, the claimant was reinstated with, his employer and awarded full back wages as follows:

\$435.78 for each week beginning with the week ending August 16, 1986 through September 27, 1986;
\$435.79 for each week beginning with the week ending October 4, 1986 through November 15, 1986;
\$174.24 for November 17 and 18, 1986; and
\$274.43 for the period November 19 through November 22, 1986.

There was no deduction made in award of back pay for the amount of unemployment insurance received by the claimant. As a result, the agency determined that the claimant was overpaid \$2,925.00 in unemployment insurance benefits and the claimant appealed that determination.

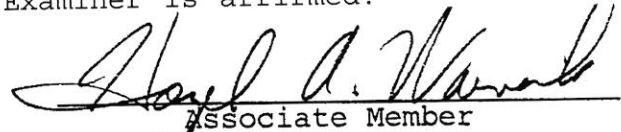
CONCLUSIONS OF LAW

The Board concludes that the claimant has received benefits to which he was not entitled because he has been retroactively awarded wages within the meaning of Section 17(d) of the law. In the case of Katsianos v. Maryland Employment Security Administration, 42 Md. App. 688, 402 A.2d 144 (1979) the Court of Appeals ruled that it was the legislature's intention to provide for the recoupment of benefits where a claimant has been awarded back pay. Since the claimant clearly received a retroactive award of wages, that money is deductible from his unemployment insurance benefits under Section 17(d) of the law and the agency properly issued an overpayment for the full amount of benefits, since the amount of back wages received by the claimant for each week was in excess of his weekly benefit amount. Therefore, the decision of the Hearing Examiner is affirmed.

DECISION

The claimant was overpaid benefits within the meaning of Section 17(d) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from August 10, 1986 through November 22, 1986. Benefits in the amount of \$2,925 are recoverable pursuant to this provision of the law.

The decision of the Hearing Examiner is affirmed.


Associate Member


Associate Member


Chairman

H:D:K

kmb

DATE OF HEARING: January 24, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John T. McGucken - Agency Counsel

Recoveries - Room 413

UNEMPLOYMENT INSURANCE - BALTIMORE

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaeter Governor
Randall Evans Secretary

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

Donna P. Watts
Associate Member

DECISION

DATE : June 9, 1988

DECISION NO. : 218-DR-88

APPEAL NO. : 8710607

S.S. NO.:

CLAIMANT: Kenneth English

EMPLOYER: Maryland Reception Center
c/o Dept. of Personnel

L. O. NO.: 1

APPELLANT: CLAIMANT

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After receipt of your Petition for Review of the decision of the Hearing Examiner, the Board of Appeals has considered all of the facts and records in your case.

The Board of Appeals has concluded that the decision of the Hearing Examiner is in conformity with the Maryland Unemployment Insurance Law and, accordingly, your Petition for Review is denied.

YOU may file an appeal on or before the date below stated. The appeal may be taken in person or through an attorney to the Circuit Court of Baltimore City, if you reside in Baltimore City, or to the Circuit Court of the County in Maryland in which you reside.

The period for filing an appeal to court expires at midnight, July 9, 1988.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

HEARING EXAMINER'S DECISION FILE

RECOVERIES - ROOM 413

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

—DECISION—

Date: Mailed March 31, 1988
Appeal No: 8710607
S.S. No.: 214-58-8357
L.O.No.: 01
Appellant: Claimant
Employer: Maryland Reception Ctr, 350203
c/o Dept. of Personnel
Claimant: Kenneth English

Issue: Whether the Claimant was unemployed within the meaning of Section 20(L) of the Law. Whether the Claimant is overpaid benefits within the meaning of Section 17(d) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON April 15, 1988
NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Not Represented

Other:
Department of Economic &
Employment Development
Carol White, Claims Specialist III

The above entitled matter was remanded by the Board of Appeals for an additional hearing due to the fact that the taped testimony at the prior hearing could not be located.

FINDINGS OF FACT

The Claimant filed an original claim for unemployment insurance

benefits effective August 10, 1986.

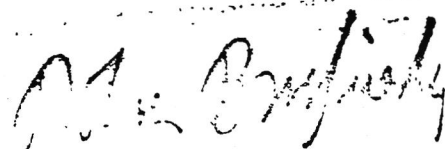
The Claimant had been employed by the Maryland Penitentiary as a correctional officer. He was suspended from work for alleged commission of a crime. He did not work, and received no wages during this period of time. After filing for unemployment insurance benefits, the Claimant was found eligible for benefits, and he was paid total benefits in the amount of \$195 for 15 consecutive weeks ending November 22, 1986. Technically, the suspension of the Claimant from work was rescinded after he was found not guilty in a criminal trial. He was awarded back wages for all of the previous weeks during which he had been suspended from work. There upon, the Agency determined that the Claimant had been overpaid benefits as a result of receiving retroactive wages from the State of Maryland, and the Agency determined that the Claimant was overpaid \$2,925 in unemployment insurance benefits. He appeals.

CONCLUSIONS OF LAW

As previously concluded: The evidence is clear that where a Claimant has received retroactive wages or back pay, the Unemployment Insurance Administration Agency may recover Unemployment Insurance benefits paid to such a Claimant within the meaning of Section 17(d) of the Maryland Unemployment Insurance Law. Thus, the Claimant the received an award of back pay after his suspension was rescinded and he received that pay during December, 1986 and was paid for each and every week that he previously did not receive wages. Those 15 weeks during which the Claimant received unemployment insurance benefits and retroactively was paid wages, he is not eligible due to the receipt of "back pay." The proper Section of the Law to be applied in a situation such as this is Section 17(d) of the Law. See: Kastianos v. Maryland Unemployment Security Administration 42-Md. APP 688 402 A2d44 9) and see this also applied in a more recent case of Tracy v. S.&M. Chemicals, 166-BH-84. Thus, in this case the Claimant has been retroactively paid wage and he was therefore, not entitled to unemployment insurance benefits and the benefits are recoverable under Section 17(d) of the Law." Accordingly, since that Section 17(d) of the Maryland Unemployment Insurance Law provides that where "...the individual received or has been retroactively awarded wages, was not unemployed, or was found by the Secretary in a determination or re-determination of an original claim to be disqualified or otherwise ineligible for the benefits, the amount of those benefits may be recovered by the Secretary." Section 17(d)(4) of the Statute also provides that "The Secretary may reconsider the decision to recover any overpayment at any time within one year of the date the decision to recover the overpayment was made."

DECISION

It is held that the Claimant received retroactively awarded wages, pursuant to the provisions of Section 17(d) of the Maryland Unemployment Insurance Law. Benefits are denied from August 10, 1986 through November 22, 1986. Benefits in the amount of \$2,925 are recoverable pursuant to this provision of the Law. The determination of the Claims Examiner pursuant to the provisions of Section 20(1) of the Unemployment Insurance Law is reversed.



Robin L. Brodinsky
Hearing Examiner

Date of Hearing: March 14, 1988

Cassette: 7147

Specialist ID: 80815

Copies Mailed on March 31, 1988 to:

Claimant

Employer

Unemployment Insurance - Baltimore (MABS)

Board of Appeals

Recoveries Room - 413