

- DECISION -

Claimant:
DIANE P BLOYER

Decision No.: 3633-BR-11

Date: July 11, 2011

Appeal No.: 1108160

S.S. No.:

Employer:

L.O. No.: 65

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: August 10, 2011

REVIEW ON THE RECORD

After a review on the record, and after deleting the last sentence, the Board adopts the hearing examiner's modified findings of fact but adopts the hearing examiner's conclusions of law. The Board makes the following findings of fact:

The claimant had received a benefit determination which advised her to continue to file her claims during the pendency of any appeal. When the claimant received this, because she was uncertain, she contacted the Agency. She was told by someone with the Agency that she did not need to file her claims during this period.

The Board concludes that these facts warrant different conclusions of law.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or evidence that the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that she has filed timely and proper claims for benefits

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 09.32.02.04B(1) provides, in essence, that following an initial or reopened claim, a claimant shall file claims in the manner required by the Secretary.

COMAR 09.32.02.04B(2) provides that the Secretary may instruct the claimant to file a continued claim by:

- (a) Telephoning the Department's interactive voice responsive unit following the receipt by mail or electronic means of a telephone claim form covering a specific week or weeks.
- (b) First class mail using the paper claim form provided by the Secretary or by mail or electronic means which covers the specific week or weeks; or
- (c) Electronic means following receipt of a claim form by mail or electronic means which cover the specified week or weeks.

COMAR 09.32.02.04B(3) provides that continued claims shall be filed no sooner than the Sunday immediately following the close of the week or weeks for which the benefits are sought. If the claimant does not receive a claim notification within one week of the date on which the continued claim is required to be filed, the claimant shall contact the office to report not receiving the notification.

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 claim, 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; [emphasis added]
- (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.

COMAR 09.32.02.04B(5)(a) provides that "continued claims shall be filed and received within 14 days in order to be timely, if the claimant is currently filing continued claims. Continued claims filed more than 2 weeks late shall be considered timely only if the Department's error caused the claimant not to receive the claim forms ..."

Under Article 94, Section 2 of the Annotated Code of Maryland, when the last day of a period of time prescribed by any statute falls on a Sunday or legal holiday, the period of time runs until the end of the next day, which is neither a Sunday nor a holiday.

COMAR 09.32.02.04B(5)(c) provides that a claimant who fails to file a timely continuing claim shall file an initial or re-opened claim as instructed in COMAR 09.32.02.03C of this chapter to reactivate the claim. A continued claim filed after filing an untimely claim but before reactivating the claim shall be denied.

In this case, the claimant credibly testified that someone from the Agency specifically instructed her to not file claims during the period for which she had been disqualified due to an initial determination that she received severance pay. The hearing examiner relied upon the written statement in the benefit determination which cautions a party to continue to file claims. However, the claimant spoke to someone with the Agency and the Board finds her reliance upon that person's advice to have been reasonable. The claimant had no way to know which method was the correct procedure for her to follow. The claimant relied upon information from the Agency which was erroneous. Under COMAR 09.32.02.03(D)(4), the claimant should be allowed to have her claims back-dated.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant has met her burden and established that she filed a timely claim for benefits for the week beginning September 27, 2009 through the week ending April 17, 2010. The decision shall be reversed for the reasons stated herein.

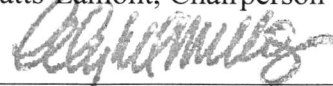
DECISION

The claimant filed valid and proper claims within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 901 and COMAR 09.32.02.04. Benefits are allowed for the week beginning April 18, 2010.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

DIANE P. BLOYER

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DIANE P BLOYER

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: 1108160

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

March 30, 2011

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, Diane Bloyer, filed for unemployment benefits with a benefit year beginning November 1, 2009 with a weekly benefit amount of \$410.00. The claimant is seeking backdated benefits for the period from April 18, 2010 through September 11, 2010. The claimant failed to file continued claims in a timely manner because she was denied benefits due to a severance package she received from her prior employer. The claimant was initially denied as a result of the severance; however, the Agency later determined that the financial compensation she received from her prior employer did not constitute severance pay. During the severance disqualification, the claimant did not file any telecerts because the Agency did not tell her that she was to file during the severance disqualification.

CONCLUSIONS OF LAW

A claimant 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 claim, 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

In the case at bar, the credible evidence establishes that the claimant failed to prove that she had good cause for failing to timely file his or her claims.

Although the claimant testified that she was not told to file telecerts during the severance disqualification, she had every right to appeal that determination, which clearly states on the determination letter that a claimant MUST continue to file timely claims in order to remain eligible. The claimant failed to do so and therefore, insufficient evidence was presented to prove that she had good cause for failing to file timely claims. Consequently, benefits shall be denied under 8-901.

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 18, 2010 through September 11, 2010.

The Determination of the Claims Examiner is affirmed.



M M Medvetz, 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 this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. 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.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

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 April 14, 2011. 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
Phone 410-767-2781

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

Date of hearing: March 19, 2011

DAH/Specialist ID: USB3D

Seq No: 002

Copies mailed on March 30, 2011 to:

DIANE P. BLOYER

LOCAL OFFICE #65

SUSAN BASS DLLR