

**- DECISION**

EMPLOYER:

EXPRESSO EXPRESSIONS

DATE: July 21, 2014

DECISION #48-SE-14

DETERMINATION #1410614

EMPLOYER ACCT.#

**ISSUE :** Whether benefits paid to K. D. DRIVER, SS#: xxx-xx- , are proper and chargeable to the employer's unemployment insurance account.

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**- 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 20, 2014

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**- APPEARANCES -**

FOR THE APPELLANT:  
Margaret Cefail, Co-Owner

FOR THE SECRETARY:  
Sheldon Narrow, Appeals Representative

## FINDINGS OF FACT

The claimant remains a part-time employee of this Employer. The claimant obtained this position after she was separated from her prior employment. Other than a brief period during which the claimant could not work for personal reasons, the employer has continued to employ the claimant for 10 to 12 hours each week, since November 2012.

The effective date for the Maryland Unemployment Insurance claim is October 14, 2013. The claimant's weekly benefit amount is \$146. The base period for this claim covered the third and fourth quarters of 2012 and the first and second quarters of 2013. The claimant worked for this employer during the last three of these four base-period quarters. This employer is charged with 53% of the claim.

Because the claimant did not separate from her prior employment while she was employed with this employer, the Agency found the employer was not entitled to relief from charges.

## CONCLUSIONS OF LAW

*The Maryland Code Annotated, Labor and Employment Article, Title 8, Section 611(g)* provides:

The Secretary may not charge the earned rating record of the employing unit that has employed a claimant on a continuous part-time basis and continues to do so while the claimant is separated from other employment and is eligible for benefits because of that separation.

## EVALUATION OF THE EVIDENCE

The Board of Appeals finds, based upon the preponderance of the credible testimony and evidence presented by the parties, that this Employer should be entitled to relief from the benefit charges herein. In this case the evidence supports a finding that the Employer employs the claimant on a part-time basis and continues to do so.

The Board does not agree with the Agency's narrow construction and application of § 8-611(g). The Board does not find that the plain language of that statute requires the current part-time employment to have been concurrent with the employment from which the claimant separated. The Board finds this narrow interpretation to be contrary to the general purpose of unemployment insurance benefits for qualified individuals. The Board also finds this contrary to the concept that employers are charged for benefits paid to claimants who have separated under qualifying circumstances.

In this case, the claimant had a qualifying separation from another, unrelated employer prior to obtaining her position with this employer. She did, as claimants are required to do, seek and obtain new employment. She has continued to work in the new, part-time position since she was hired. There has

never been a separation from her employment with this employer; absent a qualifying separation, the Board does not believe this employer should bear any of the charges for benefits paid. The Board concludes that the Agency's requirement that the employment situations be concurrent is outside the bounds of § 8-611(g).

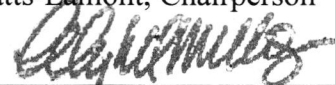
DECISION.

Review Determination No. 1410614 is hereby REVERSED.

The claimant's employment was continuous part-time employment, such that the employer's experience rating account should be relieved of charges under § 8-611(g).



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

YJ

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