

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.:	497-BR-89
	Date:	June 9, 1989
Claimant: Deirdre Thompson	Appeal No.:	8901652
	S. S. No.:	
Employer: Howard Co. Board of Ed.	L. O. No.:	23
	Appellant:	EMPLOYER

Issue:

Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N); whether the claimant is eligible for benefits within the meaning of Section 4(f)(3) 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

July 9, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner as to whether or not the claimant is eligible for benefits within the meaning

of Section 4(f)(3) of the Maryland Unemployment Insurance Law. The decision of the Hearing Examiner finding good cause to reopen this dismissed case under COMAR 24.02.06.02(N) is affirmed.

The claimant has worked as a substitute teacher for the Howard County Public Schools since 1985.

In May of 1988, the claimant received a letter from her employer giving her reasonable assurance that she would return to her position as a substitute teacher for the 1988-89 school year, thereby evidencing their intent to continue the employment relationship. The claimant returned the postcard contained with this letter, indicating her intent to continue as a substitute teacher for the 1988-89 school year.

During the 1986-87 school year, the claimant worked 95 days. During the 1987-88 school year the claimant worked 91 school days. The school year consists of 190 days.

The most important indications of whether a substitute teacher has a reasonable expectation of performing services are the history of the employment relationship and the stated intentions of both parties. An employment history showing a relatively stable utilization of the claimant's services during one academic year will tend to show that the claimant does have a reasonable assurance, while a history showing scarcely any past employment will tend to show that there is no reasonable assurance. Each case, of course, is to be decided on its merits, and facts concerning the employment history should be fully developed. Bonds v. Baltimore City, EB-936 (Remand Order, dated November 10, 1982). See also, Kernisky v. Prince George's County Public Schools, 577-BH-84.

The claimant's employment history and the statements of the claimant and the employer, in this case are sufficient to find that the claimant had a reasonable assurance of returning to her employment for the 1988-89 school year.

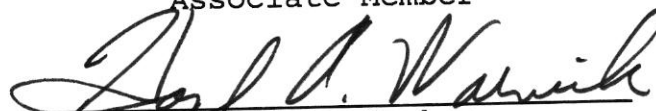
DECISION

There was good cause to reopen this dismissed case within the meaning of COMAR 24.02.06.02(N). The decision of the Hearing Examiner is affirmed as to this issue.

The claimant did have reasonable assurance within the meaning of Section 4(f)(4) of the Maryland Unemployment Insurance Law of returning to her employment. The claimant is disqualified from receiving benefits from the week beginning June 12, 1988

until the beginning of the 1988-89 school year. The decision of the Hearing Examiner is reversed as to this issue.


Associate Member


Associate Member

DW:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ELLICOTT CITY

Recoveries - Room 413



Maryland

Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201
(301) 333-5040

— DECISION —

Date: Mailed: April 20, 1989

Claimant: Deirdre Thompson

Decision No.: 8901652

S. S. No.:

Employer: Howard Co. Bd. of Education

L.O. No.: 23

Appellant: Claimant

Issue: Whether the claimant is eligible for benefits within the meaning of Section 4(f)(3) of the Law. Whether the claimant is overpaid benefits within the meaning of Section 17(d) of the Law. Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

— 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON May 5, 1989

— APPEARANCES —

FOR THE CLAIMANT

FOR THE EMPLOYER:

Deirdre Thompson - Claimant

Cindy Placko - The
Gibbens Co., Inc.;
Carol Parham -
Supervisor - Human
Resources

FINDINGS OF FACT

This case was last scheduled for March 3, 1989 at 12:30 p.m. It was dismissed when the claimant did not appear. She arrived at 12:30 p.m. The case was not called at 12:30 p.m. so she went to the bathroom. While she was in the bathroom, the case was called and dismissed. She inquired upon returning, but was informed that the case had been dismissed and the employer had left. There is good cause to reopen this dismissed case.

The claimant has worked as a substitute teacher for the Howard County Public Schools since 1985. For the school year ending in June of 1988, she was disqualified from receiving benefits because she had reasonable assurance of returning to work.

The claimant worked 91 days out of 191 days for the 1987-1988 school year. Although she was on the substitute list, she only received two calls from the office in charge of hiring substitutes. The other jobs she obtained through her own efforts by calling principals she had worked for.

The letter used by the employer simply assures that a substitute is placed on the substitute list. It does not reasonably assure the substitute will be called to work.

CONCLUSIONS OF LAW

Under COMAR 24.02.06.02(N), an appellant has the right to reopen a dismissed case if there is good cause for failing to appear at the previous hearing.

There is good cause in this case. The claimant was present on time, but the case was not called. When the case was not called, she went to the bathroom. While in the bathroom, the case was called and dismissed.

Although a reasonable assurance is something less than a guarantee, it must be based on something more than merely being on a list. Barnes v. Baltimore City, EB-936; Kernisky v. Prince George's County Public Schools, 577-BH-84. The letter routinely sent out by the employer assured the claimant of being on the substitute list but did not assure her of employment. She was only called twice by the office in charge of hiring substitutes. The other jobs she obtained through her own efforts.

DECISION

There is good cause to reopen this dismissed case.

The determination of the Claims Examiner is reversed.

The claimant did not have reasonable assurance within the meaning of Section 4(f)(4).

The determination denying benefits beginning June 12, 1988 and until she meets the requirements of the Law is rescinded.

Because of this decision, the claimant is found not to have an overpayment of benefits within the meaning of Section 17(d) of the Law.


Van D. Caldwell
Hearing Examiner

Date of hearing: 4/11/89
amp/Specialist ID: 23380
Cassette No. 3004
Copies mailed on April 20, 1989 to:

Claimant
Employer
Unemployment insurance - Ellicott City (MABS)
Recoveries - Room 413