



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	501 -BR-89
	Date:	June 9, 1989
Claimant: Debra A. Miller	Appeal No.:	8902006
	S. S. No.:	
Employer: Sparrows Point Country Club	L. O. No.:	40
	Appellant:	EMPLOYER

Issue: Whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) of the law and whether the employer filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c)(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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON July 9, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD AND REMAND

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner with regard to Section 7(c)(3) and remands the case to the Appeals Division for a new hearing on the issue of Section 4(c) of the law.

After reviewing the records, the Board agrees with the employer's argument, stated in its letter of appeal, that the record contains no copies of the benefit determination allegedly mailed to the employer, who denies ever receiving the determination. The Hearing Examiner stated that there is no evidence that the determination letter was not returned and therefore a presumption arises that it was mailed and received timely. These conclusions would be appropriate if there was any evidence in the record that the determination existed. Since the Board cannot find such evidence, the Board will give the employer the benefit of the doubt, reverse the finding of late appeal (since the employer never received the determination, it's appeal is not late) and remand the case for a hearing on the merits.

DECISION

The employer did not file a late appeal within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The issue of whether the claimant was able to work, available for work or actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law is remanded to the Appeals Division for a hearing de novo.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

H:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

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Governor
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21201

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Maryland

Department of Economic & Employment Development

— DECISION —

Claimant: Debra A. Miller
Date Mailed: April 25, 1989
Appeal No.: 8902006
S. S. No.:

Employer: Sparrows Point Country Club
L.O. No.: 40
Appellant: Employer

Issue:

Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c)(3) 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

— APPEARANCES — May 10, 1989

FOR THE CLAIMANT:

FOR THE EMPLOYER

Debra A. Miller - Claimant

Peg Appel,
Manager
Dot Dorsey,
Assistant Manager/
Supervisor

FINDINGS OF FACT

A benefit determination mailed to the parties provided that the last day to file a timely appeal was February 5, 1989. In this case, the appeal sent by mail via a letter dated February 15, 1989, which was received by the Eastpoint local office on February 17, 1989.

The appellant offers for the reason of the late appeal, that it did not receive the benefit determination letter.

There is no evidence in the file that the benefit determination mailed to Sparrows Point Country Club, at its Wise Avenue address in Baltimore, Maryland was returned by the U.S. Postal Service. Since the determination letter was not returned, and other mail was admittedly received by Sparrows Point Country Club from the State of Maryland regarding this case, the presumption is that the determination was also mailed and received timely by the appellant.

CONCLUSIONS OF LAW

In Premick v. Roper Eastern (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant filed a late appeal for reasons which do not constitute good cause under the provisions of Article 95A, Section 7(c)(3) and legal precedent construing that action.

DECISION

It is held that the appellant did not file a valid and timely appeal within the meaning and intent of Article 95A, Section 7(c)(3).

The determination of the Claims Examiner (and any disqualification applied) remains effective and unchanged.

Judy-Lynn Goldenberg
Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: April 13, 1989
bch/Specialist ID 40318
Cassette No: 2903 & 2904
Copies mailed on April 25, 1989 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)