

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech  
Chairman

Hazel A. Warnick  
Associate Member

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



William Donald Schaeter, Governor  
J. Randall Evans, Secretary

— DECISION —

Decision No.: 540-BR-87  
Date: July 30, 1987  
Claimant: Jackie Segall  
Appeal No.: 8702132  
S. S. No.:  
Employer: Baltimore Comm. College  
L.O.No.: 9  
Appellant: CLAIMANT

Issue: Whether the claimant had a contract or reasonable assurance of employment within the meaning of Section 4(f)(5) of the law; whether the claimant was overpaid benefits under Section 17(d) of the law; and whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON August 29, 1987

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Hearing Examiner with regard to Section 4(c) of the law but reverses the decision with regard

to Section 4(f)(5) and the resulting overpayment under Section 17(d).

In order for a claimant to be disqualified under Section 4(f)(5) there must be:

. . . a reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess. [Emphasis added.]

The holiday recess in question here was from December 22, 1986 until January 1, 1987. Due to a lack of sufficient enrollment, the claimant did not have reasonable assurance of returning until January 29, 1987, almost a month after the holiday recess ended. This is not immediately following the recess and therefore is not reasonable assurance within the meaning of Section 4(f)(5) of the law.

#### DECISION

The claimant did not have reasonable assurance that she would return to her employment within the meaning of Section 4(f)(5) of the Maryland Unemployment Insurance Law. NO disqualification is imposed under Section 4(f)(5) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner with regard to Section 4(f)(5) is reversed.

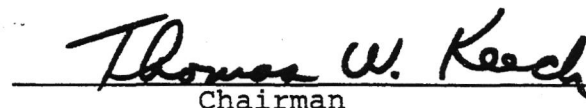
The claimant is not overpaid benefits under Section 17(d) of the law.

The decision of the Hearing Examiner with regard to Section 17(d) is reversed.

The claimant did not meet the eligibility requirements of Section 4(c) of the law. Benefits are denied for the week beginning February 1, 1987 and until the claimant meets all of the requirements of Section 4(c) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner with regard to Section 4(c) is affirmed.

  
Associate Member

  
Chairman

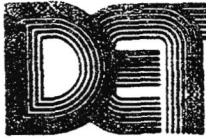
CGPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

Recoveries Section - Room 413



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
William Donald Schaefer
Governor

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed 6/8/87
Appeal No.: 8702132
S.S. No.:

Employee: Baltimore Community College
c/o Charles Spinner
111 North Calvert Street
Baltimore, MD 21202
L.O. No.: 09
Appellant: Claimant

Issue: Whether the claimant had a contract or reasonable contract
of employment within the meaning of Section 4 (f)4 the
Law.
Whether the claimant was overpaid benefits under Section 17
(d) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY
EMPLOYMENT SECURITY 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 June 23, 1987

APPEARANCES

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by
Charles Spinner,
Personnel Technician
Supervisor; and
Barbara Murray, Di-
rector of Personnel

OTHER: DEPARTMENT OF EMPLOYMENT & TRAINING:
PATRICIA LA MARIA - CLAIMS SPECIALIST II

FINDINGS OF FACT

The claimant was employed at the Community College of Baltimore
from October, 1985 to December 19, 1986. The claimant was
employed as a Registered Nurse, earning \$10.00 an hour. At the

time of hire in October, 1985, the claimant worked 35 hours a week. However, as of June, 1986, the claimant's hours of work were reduced to 22 hours per week.

The Community College of Baltimore closed from December 22, 1986 to January 1, 1987, due to the winter recess. The claimant was willing to work the winter session from January 5, 1987 to January 30, 1987. However, due to lack of enrollment, there was no winter session from January 5, 1987 to January 30, 1987 at the Community College of Baltimore. The claimant did work the winter session in 1986.

The claimant had a reasonable assurance of returning to work at the Community College of Baltimore as of February 2, 1987. However, the claimant did not return to work at the Community College of Baltimore beginning February 2, 1987, because she was pregnant and her doctor advised her to stop working as of January 29, 1987. There was work available for the claimant beginning January 29, 1987. The Department of Employment and Training determined the claimant to be overpaid for the claim weeks ending January 3, 10, 17 and January 24, 1987 in the amount of \$195.00 a week for a total overpayment of \$780.00 pursuant to Section 17 (d) of the Maryland Unemployment Insurance Law.

#### CONCLUSIONS OF LAW

Section 4 (f)(5) of the Maryland Unemployment Insurance Law states that an individual shall not be paid benefits where one was employed in a capacity of an instructional, research, or principle administrative and educational institution. The unemployment commenced during an established, customary vacation period or holiday recess, and there was a reasonable assurance that the claimant would return to her immediately after the vacation or holiday period.

The claimant went on a customary vacation from the Community College of Baltimore beginning December 21, 1986 to January 1, 1987. The claimant was planning to work the winter session at the Community College of Baltimore. However, due to a lack of student enrollment, there was no winter session at the Community College of Baltimore from January 5, 1987 to January 30, 1987. It will be held that the claimant was on a customary vacation for a two-week period beginning December 21, 1986 to January 1, 1987 for a two week period of time. The claimant did not work the winter session. The claimant's not working the winter session was due to a lack of students to sign up for classes. The Maryland Board of Appeals in the case of Connios v. Baltimore City Schools, 261-BH-83 held that since the claimant's re-employment depended on student enrollment and finances, the claimant's work history

alone would not support a finding of reasonable assurance. Therefore, it will be held that the claimant is denied benefits under Section 4 (f)(5) of the Law from December 21, 1986 to January 3, 1987. The determination of the Claims Examiner within the meaning of Section 4 (f) (5) of the Law will be modified.

It will be held that the claimant is overpaid for the claim weeks ending January 3, 1987 in the amount of \$195.00 within the meaning of Section 17 (d) of the Maryland Unemployment Insurance Law. The determination of the Claims Examiner under Section 17 (d) of the Law will be modified.

Section 4 (c) of the Maryland Unemployment Insurance Law requires one to be able, available, and actively seeking work to be eligible for unemployment insurance benefits. There was work available for the claimant at the Community College of Baltimore beginning February 2, 1987. However, the claimant was unable to return to work at the Community College of Baltimore beginning February 2, 1987, because of her pregnant condition she was advised not to return to work.

Further, the Code of Maryland Regulations, 24.02.02.03 H (3) states that one is not entitled to the sick claim provision of the Maryland Unemployment Insurance Law if an individual is not available for work offered by her employer. Since the claimant was not able to return to work at the Community College of Baltimore when there was work available for her on February 2, 1987, it will be held that the claimant has not been meeting the requirements of Section 4 (c) of the Law and has not also been meeting the requirements of the sick claim provision of the Maryland Unemployment Insurance Law.

#### DECISION

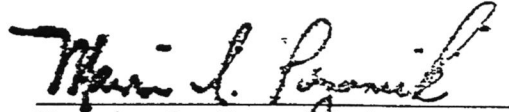
It is held that the claimant had a reasonable assurance that she would return to her employment at the Community College of Baltimore after the vacation. Benefits are denied from December 21, 1986 to January 3, 1987.

The determination of the Claims Examiner, under Section 4 (f) (5) of the Law, is modified.

The claimant is overpaid benefits for the claim week ending January 3, 1987 in the amount of \$195.00 within the meaning of Section 17 (d) of the Law.

The determination of the Claims Examiner, within the meaning OF Section 17 (d) of the Law, is modified.

The claimant has not been meeting the eligibility requirements of Section 4 (c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning February 1, 1987 until the claimant meets all of the requirements of Section 4 (c) of the Maryland Unemployment Insurance Law.

  
\_\_\_\_\_  
Marvin I. Pazordick  
HEARING EXAMINER

DATE OF HEARING - 5/1/87  
cd  
2467/LaMara

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Claimant  
Employer  
Unemployment Insurance - Towson - (Pre-MABS)

Recoveries - RM #413