



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5032

BOARD OF APPEALS
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HAZEL A. WARNICK
MAURICE E. DILL
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SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 580-BH-85
Date: July 31, 1985

Claimant: Arie Spigel

Appeal No.: 00119

S. S. No.:

Employer:

L.O. No.: 40

Appellant: CLAIMANT

Issue: Whether the claimant filed proper claims for benefits within the meaning of §4(b) 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 MAYBE 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 30, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Arie Spigel - Claimant

DEPARTMENT OF EMPLOYMENT & TRAINING
John Roberts - Legal Counsel

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant filed a claim for benefits with a benefit year beginning November 4, 1984. He was determined eligible for \$175.00 per week. The claimant received three checks for benefits in the mail. The last check was for the week ending November 24, 1984 and was accompanied by a claim card for the following week, the week ending December 1, 1984. The claimant filled out that card and sent it back as required by the Agency. However, the Agency presently has no record of receiving this card.

As a result, the claimant did not get any more checks for unemployment benefits. After approximately two weeks the claimant called the local office to find out why he had not received checks. He was told to wait and be patient. The claimant did not report to the local office in person at that time.

When the claimant had filed for benefits he had received all the necessary pamphlets and information that informed him that he must file a claim every week; and, for any week he did not receive a claim card, he should report to the local office in person in order to file a timely claim. Although the claimant had received this information, he did not read it all in detail because he thought he understood what he had to do to collect his benefits.

When he heard nothing further from the agency, approximately one week after he called, he came into the local office. This was sometime during the week beginning December 23, 1984. He was told to come back the following week. He did come back the following week, on December 31, 1984. At that time he finally had an opportunity to explain the situation to an agency employee and filed back claim cards for the weeks ending December 1, December 8, December 15, December 22 and December 29, 1984. However, the Claims Examiner found him disqualified under §4(b) for those weeks because he failed to file timely claims within the meaning of that section of the law and COMAR 07.04.02.03D. The claimant appealed that decision, which was affirmed by the Hearing Examiner.

CONCLUSIONS OF LAW

Under §4(b) in order to be eligible to receive benefits, a claimant must make a claim for benefits in accordance with the regulations. The appropriate regulation, 07.04.02.03D states that the claim card must be mailed "each week on the Sunday immediately following the close of the claim week for which benefits are claimed." See also, Imbesi, 588-BH-82 (affirmed by the Board of Appeals, 390-BH-84). Although the Board stated in that case that it would not always consider the claimant's receipt of an agency instruction pamphlet as fatal to a claimant's contention that he was unaware of the agency requirements, here there is no question but that the claimant had the ability to understand the pamphlet and what was required of him but simply failed to read the information thoroughly. Therefore, he cannot now back date his claims under §4(b) of the law for the weeks in which he failed to file a timely claim.

However, the claimant testified, and it is unrefuted, that he did file a timely claim card for the week ending December 1, 1984. The Board of Appeals accepts this as a fact. Therefore, the Board concludes that the claimant should not be disqualified under §4(b) for the week ending December 1, 1984. In addition, the claimant testified, and again it is not refuted, that he did report to the local office during the week ending December 29, 1984. For some reason, he was not able to discuss his case with an agency employee at that time. However, since he did appear at a local office in person at that time to try to straighten out his claims, the Board concludes that he should not be disqualified from receiving benefits under §4(b) for the week ending December 29, 1984. See, Reed, 156-BR-83, where the Board held that a disqualification under §4(b) shall not be imposed where the claimant made every reasonable attempt to file claims and was deterred only by the agency's mishandling of his claim. The Board therefore concludes that for the week ending December 1st and the week ending December 29, 1984, the claimant did make reasonable efforts to file his claims and was only deterred by agency error. However for the weeks ending December 8, 15, 22, the Board affirms the Hearing Examiner and finds that the claimant is not eligible for benefits during those three weeks.

DECISION

The claimant is disqualified from receiving benefits under §4(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week ending December 8, December 15 and December 22, 1984. He is not disqualified for the week ending December 1, 1984 and the week ending December 29, 1984.

The decision of the Hearing Examiner is modified.

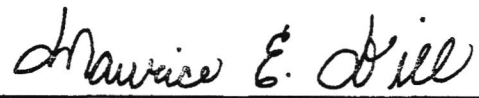

Associate Member


Chairman

W:K

DISSENT

I would adopt the findings of fact and conclusions of law of the Hearing Examiner.


Associate Member

D

kmb

DATE OF HEARING: July 9, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF EMPLOYMENT AND TRAINING

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Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Date: Mailed: March 1, 1995

Claimant: Arie Spigel

Appeal No.: 00119

S.S. No.:

Employer:

LO. No.: 40

Appellant: Claimant

Issue: Whether the claimant filed proper claims for benefits within the meaning of Section 4(b) 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 March 18, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

Other: Martha Queen,
Claims Associate
Dept. of Employment and Training

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits at the Eastpoint local office establishing a benefit year beginning November 4, 1984 and a weekly benefit amount of \$175.00. The claimant received three claim checks and mailed in the claim card that accompanied the benefit check for the week ending November 24, 1984. This card was never received by the local office.

The claimant had never filed for unemployment insurance benefits and did not fully understand the procedures involved and does not remember being told about the requirements to continue to get benefits. He called the local office and was told to be patient. Finally, he came in again on December 31, 1984 and filed backdated claim cards for the weeks ending December 1, December 8, December 15, December 22 and December 29, 1984. Benefits were denied for these weeks under Section 4(b) of the Law and the claimant appealed.

CONCLUSIONS OF LAW

Section 4(b) of the Law provides that an unemployed individual is eligible to receive benefits with respect to any week only if it is determined that he has made a claim for benefits with respect to such week in accordance with such regulations as the Executive Director may provide. The Code of Maryland Regulations, Rule 07.04.02.03D provides that:

"In order to claim benefit rights, all individuals, filing an initial claim, shall report in person to file for their first continued claim on the day and time assigned to them and thereafter by mail on the prescribed forms issued to them. These forms are to be mailed each week on Sunday immediately following the closing week for which benefits are claimed."

The above cited portions of the Law are specific in their provisions, and proper claims must be filed for a particular benefit week in accordance with the Law, if benefits are to be paid for that week. There are no exceptions provided for under the Law.

The evidence in the instant case indicates that the claimant did not file proper claim cards in accordance with the above cited Section of the Law for the week ending December 1, December 8, December 15, December 22 and December 29, 1984. The determination of the Claims Examiner under Section 4(b) of the Law will be affirmed.

DECISION

The claimant is disqualified under Section 4(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week ending December 1, 1984 until December 29, 1984.

3 Appeal No. 00119

The determination of the Claims Examiner is affirmed.



Seth Clark
Appeals Referee

Date of hearing: 1/23/85

jlt

(no cassette #-Queen)

Copies mailed on March 1, 1985 to:

Claimant

Unemployment Insurance - Eastpoint