

**- DECISION -**

Claimant:	Decision No.:	5920-BR-12
KIMBROUGH I KELLY	Date:	December 21, 2012
	Appeal No.:	1217563
	S.S. No.:	
Employer:	L.O. No.:	63
BALTIMORE CITY COMMNTY COLLEGE	Appellant:	Claimant

Issue: Whether the claimant has made a false statement or representation knowing it to be false or has knowingly failed to disclose a material fact in order to obtain or increase any benefit or other payment within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 809.

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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: January 21, 2013

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**PREAMBLE**

The following decision concerns appeals numbers 1217563 through 1217565, inclusive. For clarity, the Board restates the issues in this consolidated decision as follows:

Appeal No. 1217563 addresses the issue of whether the claimant obtained benefits that he was not otherwise entitled as a result of fraud within the meaning of *Maryland Code Ann., Lab. & Empl. Art., §§ 8-1301 and 8-1305*.

In addition to the penalties imposed pursuant to § 1305 in appeal 1217563, a finding of fraud pursuant to § 1301 in appeal 1217563 triggers the issue of whether the claimant failed to disclose a material fact in order to obtain or increase a benefit or other payment under the *Maryland Unemployment Insurance Law* and as a result was overpaid benefits within the meaning of *Md. Code Ann., Lab. & Empl. Art., § 8-809(b)* in appeals 1217564 and 1217565, inclusive.

This decision also addresses appeals 1217564 and 1217565, regarding the issue of whether the claimant, as a result of inaccurate reporting of his wages, was overpaid pursuant to *Md. Code Ann., Lab. & Empl. Art., § 8-809(a)*.

The Board issues this consolidated decision in the instant case for each of the fraud and overpayment cases cited in the above referenced appeal numbers.

### REVIEW OF THE RECORD

After a review on the record, the Board makes the following findings of facts and conclusions of law. The decision of the hearing examiner is reversed.

### FINDINGS OF FACT

The claimant, Kimbrough I Kelly, filed a claim for unemployment insurance benefits, establishing a benefit year effective September 4, 2011, with a weekly benefit amount of \$430.00 plus an \$8.00 per week dependent's allowance, for a total weekly benefit amount of \$438.00.

On May 2, 2012, a Claims Specialist for the State of Maryland determined that the claimant knowingly failed to disclose a material act in order to obtain/increase benefits and thus, that the claimant committed a fraudulent act within the meaning of §8-1305 of the *Maryland Unemployment Insurance Law*. Further, the claimant was determined to have been overpaid for the full amount received for the affected weeks, as provided in §8-803, §8-809, §8-1301.

The claimant began working for the Baltimore City Community College on January 24, 2012 as an adjunct faculty member. The claimant was contacted immediately prior to the start of the 20 week semester to teach two classes. Sometime after the semester, the claimant was asked to teach a third class. The claimant signed a contract sometime after he started working. He was not provided a copy of that contract. It was not until sometime at the end of the semester that the claimant determined he was earning \$3600 for the 20 week semester. The claimant was paid in three \$1200 installments.

The following chart reflects the weeks and wages reported by the claimant in the present case.

<b>Appeal Number</b>	<b>Week Ending</b>	<b>Wages Reported by the Claimant</b>	<b>Benefits Paid</b>
1217564	1/28/12	\$100.00	\$388.0
1217564	2/4/12	\$200.00	\$288.00
1217564	2/11/12	\$100.00	\$388.00
1217564	2/18/12	\$200.00	\$288.00
1217564	2/25/12	\$150.00	\$338.00
1217564	3/3/12	\$150.00	\$338.00
1217564	3/10/12	\$150.00	\$338.00
1217564	3/17/12	\$100.00	\$388.00
1217564	3/24/12	\$100.00	\$388.00
1217564	3/31/12	\$100.00	\$ 18.00
1217565	4/7/12	0	0
1217565	4/14/12	0	0
1217565	4/21/12	0	0

The claimant's actual weekly earnings were \$3600 divided by 20 weeks. That equals \$180.00 per week.

The claimant made several efforts to obtain a copy of his contract. He also made numerous attempts to discuss his compensation with his department head as well as the payroll department. He was having difficulty obtaining the correct wage information from the employer. Because he was paid in three installments, it was not until sometime in the beginning of May that the claimant was aware of his actual earnings of \$3600 for the semester. However, because he knew he was earning some wages, he estimated his weekly earnings on each webcert he filed. The reason for the discrepancy in the amounts reported were because he was unsure what he was supposed to report but knew he needed to report some amount of income. The claimant reported his wages accurately to the Agency to the best of his knowledge and abilities.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Because benefits are paid on a weekly basis, the Agency has the burden to demonstrate that the claimant was overpaid benefits because of the receipt of wages earned for each week at issue within the meaning of *Md. Code Ann., Lab. & Empl. Art., § 8-809(a)* and *§8-809(b)*. The Board notes that it is the Agency's burden to provide prior notice to the claimant with the specific facts or evidence it relied upon when rendering its determination regarding these issues and must put on a *prima facie* case before the hearing examiner as to these issues. *Md. Code Ann., Lab. & Empl. Art., § 8-809(c)*. The Agency is vested with the investigatory powers to obtain wage information from employers in order to fulfill its duties under *§ 8-809(c)*. *Md. Code Ann., Lab. & Empl. Art., § 8-306*.

The parties, duly noticed of the date, time and place of the hearing, were afforded a full and fair opportunity to present their case before the hearing examiner. Included with each notice to the claimant was information concerning the issue: "Whether the claimant failed to disclose a material fact or made false statements to obtain or increase benefits to which the claimant was not entitled within the meaning of MD. Code Annotated, Labor and Employment Article, Title 8, Sections 809(b), 1301 and 1305." The claimant had previously received benefit determinations specifically setting forth the weeks she had been found to have under-reported her earnings. The Board finds that the claimant was afforded full and complete notice of the issue, and information, upon which the Agency relied in making its decisions.

*Maryland Code Ann., Lab. & Empl. Art., § 8-809* provides, in pertinent part:

Recovery of benefits

(a) Redetermination; retroactive award of wages; individual not unemployed. -- The Secretary may recover benefits paid to a claimant if the Secretary finds that the claimant was not entitled to the benefits because:

(1) the claimant was not unemployed;

(2) the claimant received or retroactively was awarded wages; or

(3) due to a redetermination of an original claim by the Secretary, the claimant is disqualified or otherwise ineligible for benefits.

(b) False statements or representation or failure to disclose material fact. -- If the Secretary finds that a claimant knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other payment under this title, in addition to disqualification of the claimant, the Secretary may recover from the claimant:

(1) all benefits paid to the claimant for each week for which the false statement or representation was made or for which the claimant failed to disclose a material fact; and

(2) interest of 1.5% per month on the amount accruing from the date that the claimant is notified by the Secretary that the claimant was not entitled to benefits received.

(c) Notice. -- If the Secretary decides to recover benefits from a claimant under subsection (a) or (b) of this section, the Secretary shall notify the claimant of:

(1) the amount to be recovered;

(2) the weeks for which benefits were paid; and

(3) the provision of this title under which the Secretary determined that the claimant was ineligible for benefits. [emphasis added]

*Maryland Code Ann., Lab. & Empl. Art., § 8-1301* provides, in pertinent part, that an individual “may not knowingly make a false statement or false representation or knowingly fail to disclose a material fact to receive or increase a benefit or other payment under this title”

*Maryland Code Ann., Lab. & Empl. Art., § 8-1305* provides, in pertinent part, that an individual who violates § 8-1301 shall make full restitution of the amount unlawfully received including interest at the rate of 1.5% per month until the full amount is recovered and is disqualified from receiving benefits for one year from the date on which a determination is made that the claimant filed a claim involving a false statement or representation, or failed to disclose a material fact.

Although the hearing examiner may rely on hearsay evidence in making his determination, the hearing examiner must, “first carefully consider[] its reliability and probative value.” *Travers v. Baltimore Police Dept.*, 115 Md. App. 395, 413 (1997). “The Court has remained steadfast in reminding agencies that to be admissible in an adjudicatory proceeding, hearsay evidence must demonstrate sufficient reliability and probative value to satisfy the requirements of procedural due process.” *Id.* at 411. See also *Kade v. Charles H. Hickey School*, 80 Md. App. 721, 725 (1989) (“[e]ven though hearsay is admissible, there are limits on its use. The hearsay must be competent and have probative force.”).

One important consideration for a hearing body is the nature of the hearsay evidence. For instance, statements that are sworn under oath, see *Kade*, 80 Md. App. at 726, 566 A.2d at 151, *Eichberg v. Maryland Bd. of Pharmacy*, 50 Md. App. 189, 194, 436 A.2d 525, 529, or made close in time to the incident, see *Richardson v. Perales*, 402 U.S. 389, 402, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1971), or corroborated, see *Consolidated Edison v. N.L.R.B.*, 305 U.S. 197, 230, 83 L. Ed. 126, 59 S. Ct. 206 (1938) ("mere uncorroborated hearsay or rumor does not constitute substantial evidence"); *Wallace v. District of Columbia Unemployment Compensation Bd.*, 294 A.2d 177, 179 (D.C. 1972), ordinarily is presumed to possess a greater caliber of reliability. Cited in *Travers* 115 Md. App. at 413. Also see *Parham v. Dep't of Labor, Licensing & Regulation*, 985 A.2d 147, 155 (Md. Ct. Spec. App. 2009). Also see *Cook v. National Aquarium in Baltimore*, 1034-BR-91 (the employer offered not a single specific example of the alleged misconduct as observed by either of the employer's witnesses and no documents were introduced relating to any specific instance of misconduct. The employer offered only conclusory statements that the claimant engaged in a certain type of misconduct).

The hearing examiner made no such examination into the reliability of the hearsay evidence in her evaluation of the evidence in this case. As the Court of Appeals has noted, for a reviewing court to perform properly its examination function, an administrative decision must contain factual findings on all the material issues of a case and a clear, explicit statement of the agency's rationale. *Harford County v. Preston*, 322 Md. 493, 505, 588 A.2d 772, 778 (1991). A fully explained administrative decision also fulfills another purpose; it recognizes the "fundamental right of a party to a proceeding before an administrative agency to be apprised of the facts relied upon by the agency in reaching its decision . . . ." *Id.*; also see *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 56 (2002); *Fowler v. Motor Vehicle Administration*, 394 Md. 331, 353 (2006); *Crumlish v. Insurance Commissioner*, 70 Md. App. 182, 187 (1987).

In *Kade v. Charles H. Hickey School*, the Court of Special Appeals reversed a decision by an administrative agency for similarly relying on hearsay evidence without establishing the reliability of that evidence. In *Kade*, a school employee appealed his suspension by his employer for disrespectful conduct towards a fellow employee. At the hearing before the administrative agency, the superintendent of the school was the only witness for the employer. The superintendent testified that he was not present on the night of the incident and that all of the information he possessed was based on statements given to him. The Court found the agency's reliance on the hearsay statements submitted by the superintendent to be improper.

Even though the statements were relevant, *there was no indication that this hearsay evidence was reliable, credible or competent.* The statements which were submitted by appellant's co workers are not under oath and do not reflect how they were obtained.... No reason was given as to why the declarants were unavailable.

The Court's rejection of the administrative agency's use of hearsay evidence in *Kade* applies with equal force to the hearing examiner and the Board in this case.

The only statements from the employer is contained in the Agency Fact Finding Report (*Agency Exhibit 1*) and the Request for Employee's Wages (*Agency Exhibit 2*). Although the Agency Fact Finding Report is a public document, the statements contained therein are hearsay. While hearsay is admissible in an administrative proceeding, it is usually given less weight than credible, first-hand testimony. Although the hearing examiner may rely on hearsay evidence in making his determination, the hearing examiner must, "first carefully consider[] its reliability and probative value." *Travers v. Baltimore Police Dept.*, 115 Md. App. 395, 413 (1997); also see *Kade v. Charles H. Hickey School*, 80 Md. App. 721, 725 (1989) ("[e]ven though hearsay is admissible, there are limits on its use. The hearsay must be competent and have probative force."). In the instant case, the hearing examiner relied on hearsay evidence as the basis of the decision and improperly weighed the credible evidence in the record.

The Agency requested that the employer accurately provide the Agency with correct reporting of the claimant's wages. The employer provided the Agency with the completed form "Request for Employee's Weekly Wages" (*Agency Exhibit 2*). The claimant credibly testified that the employer's wage information is incorrect. The claimant specifically testified that he never received these weekly wages that his total 20 week salary was \$3600--\$1200 per class he taught.

The employer failed to provide the Agency with accurate information. The Agency representative failed to question the claimant. The Agency representative also failed to provide other wage information, ie payroll records, to show that these wages reported by the employer were the claimant's accurate wages. Therefore, the Board does not find the Agency's documentary evidence reliable. The Agency provided no evidence as to the accuracy of these alleged reports nor was there any employer witness available to assist with an explanation of the purported evidentiary process.

The claimant, on the other hand, denied that the wages that were reported by the employer were accurate. He specifically acknowledged that he did not know how much he was earning. He was unemployed, he took the job because he needed income. He was contacted at the last minute to teach the classes, so he jumped at the chance to re-enter the workforce.

The claimant did report what he believed were his wages to the best of his knowledge and ability. Therefore, the Board finds that the claimant did not intentionally underreport his wages in order to increase her unemployment benefit.

The Board is unable to determine from the Agency representative's testimony or any documentary evidence provided by the Agency, the accuracy or veracity of any of the wages reported by the employer to the Agency.

Based on the fact that the employer was not available to refute the claimant's testimony that the wages the employer reported were incorrect, the Agency could not provide the correct, actual, accurate wages of the claimant. Thus, the Board finds that the employer's information cannot be proven, and the Agency's case fails for lack of accurate wage information.

The Board finds that the Agency has failed to present the accurate wage information required to prove by a preponderance of the credible evidence that the claimant had the requisite intent to intentionally mislead the Agency in order to increase his benefits.

The Board is unwilling to take as absolute evidence the testimony of the Agency representative merely reading the reported wages of the employer into the record. The Agency has the investigative authority to provide the Board and the Lower Appeals Division with the appropriate accurate evidence. Reading the information from the Fact Finding Report, without accurate documentary evidence to verify the wages, is not enough for the Agency to meet its standard of proof.

There is insufficient evidence to establish that the employer's reporting of the claimant's weekly gross wages is accurate. Because the Agency has no other evidence to establish that the claimant knowingly and intentionally misreported her earnings, the Board finds that the claimant did not violate § 8-1301 and § 8-1305.

### DECISION

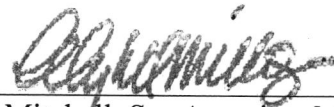
The Board finds that based upon the preponderance of the credible evidence the Agency failed to meet its burden that the claimant knowingly and intentionally misreported his earnings in violation of § 8-1301 and § 8-1305.

The Board further finds that any benefits paid to the claimant from the weeks beginning January 22, 2012 through April 21, 2012 (inclusive), cannot be recovered because the Board finds that the claimant was not overpaid pursuant to *Md. Code Ann., Lab. & Empl. Art., § 8-809(a)* and *§8-809(b)* and *Maryland Code Ann., Lab. & Empl. Art., § 8-1305*.

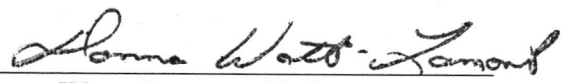
The Board finds, based upon a preponderance of the credible evidence, that the Agency failed to meet its burden of establishing that the claimant was overpaid benefits within the meaning of § 8-809(a).

The Board finds, based upon a preponderance of the credible evidence, that the Agency failed to meet its burden of establishing that the claimant knowingly made a false statement and/or failed to disclose a material fact in order to obtain or increase benefits within the meaning of § 8-809(b) and § 8-1305.

The Hearing Examiner's decisions shall be reversed for the reasons stated herein.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson



RD/mr

Copies mailed to:

KIMBROUGH I. KELLY  
BALTIMORE CITY COMMNTY COLLEGE  
MARIA NOBLE  
TRACEY JACKSON  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

KIMBROUGH I KELLY

SSN #

**Claimant**

vs.

BALTIMORE CITY COMMNTY COLLEGE

**Employer/Agency**

Before the:

**Maryland Department of Labor,  
Licensing and Regulation  
Division of Appeals**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1217563-1217565

Appellant: Claimant

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

June 15, 2012

**For the Claimant:** PRESENT

**For the Employer:**

**For the Agency:** PRESENT, TRACEY JACKSON

**ISSUE(S)**

Whether the claimant failed to disclose a material fact or made false statements to obtain or increase benefits to which the claimant was not entitled, within the meaning of MD. Code Annotated, Labor and Employment Article, Title 8, Sections 809(b), 1301 and 1305. Whether the claimant is overpaid within the meaning of Section 8-809(a).

**PREAMBLE**

Appeal Numbers 1217563 - 1217565, inclusive, were consolidated for purposes of hearing and decision. Only this one consolidated decision which addresses the issues in each of the appeals is being issued.

**FINDINGS OF FACT**

The claimant, Kimbrough I Kelly, filed a claim for unemployment insurance benefits, establishing a benefit year effective September 4, 2011, and a weekly benefit amount of \$430.00, plus dependant's allowance of \$8.00.

On or about May 2, 2012, a Claims Specialist for the State of Maryland determined that the claimant committed a fraudulent act because the claimant received wages totaling more than the claimant had

disclosed to the Agency, and that the claimant knowingly failed to disclose those material fact(s) in order to obtain and/or increase said benefits. The claimant was therefore held overpaid for the full amount received for the affected week(s) (as identified below), as provided for in Sections 8-803, 809, 1301 and 1305 of the Maryland Unemployment Insurance Law.

The claimant began working for this employer, Baltimore City Commnty College, on January 24, 2012, as an adjunct faculty member. The claimant was contacted several days before classes began and asked if he would be available to teach two weekday classes during the spring semester. Several days later, the employer asked him if would also teach a Saturday class. The claimant agreed and signed a contract regarding the terms of his employment. The claimant was paid \$1200.00 per class and received his pay in three installments of \$1200.00 throughout the semester, totaling \$3600.00 for all three classes. The claimant received his first paycheck in mid-February 2012. The semester ended May 14, 2012.

The claimant's actual earnings, his reported earnings and the amount of unemployment benefits he received for each week are as follows:

<b>Appeal No.</b>	<b>Week Ending</b>	<b>Earned</b>	<b>Reported</b>	<b>WBA Rec'd</b>
1217564	1/28/12	\$225.00	\$100.00	\$388.00
1217564	2/4/12	\$225.00	\$200.00	\$288.00
1217564	2/11/12	\$225.00	\$100.00	\$388.00
1217564	2/18/12	\$225.00	\$200.00	\$288.00
1217564	2/25/12	\$225.00	\$150.00	\$338.00
1217564	3/3/12	\$225.00	\$150.00	\$338.00
1217564	3/10/12	\$225.00	\$150.00	\$338.00
1217564	3/17/12	\$225.00	\$100.00	\$388.00
1217564	3/24/12	\$225.00	\$100.00	\$388.00
1217564	3/31/12	\$225.00	\$100.00	\$18.00
1217565	4/7/12	\$225.00	\$0.00	\$0.00
1217565	4/14/12	\$225.00	\$0.00	\$0.00
1217565	4/21/12	\$225.00	\$0.00	\$0.00

For each of the weeks listed above, the claimant filed for and received unemployment insurance benefits. For each week that the claimant filed for benefits he was asked whether he had worked or earned wages, even if they had not been paid. The claimant responded "yes," but then underreported his wages for each week in question. For the period from April 1, 2012 to April 21, 2012, the claimant reported no wages. As a result, for each of the weeks in question, the claimant received benefits to which he was not entitled.

At the hearing on this matter, the claimant claimed he did not know his rate of pay when he accepted this position, although he admits he signed an employment contract. The claimant also claims he did not know how much the employer was paying him, although he admits he received his first paycheck for \$1200.00 in mid-February. Thereafter, the claimant continued to significantly underreport his wages.

The claimant also claims he asked the employer's administrator to breakdown how much he was receiving in pay each week and that he was told to refer to his employment contract. The claimant claims he never received a copy of his employment contract, but then failed to request a copy from the employer. The

claimant admits he was "guessing" his weekly wages when he filed his claims for benefits and was aware the amount he reported was incorrect. The claimant was mailed and received the informational pamphlet, "What You Should Know About Unemployment Insurance in Maryland," which explains a claimant's responsibilities for filing for and receiving benefits.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Title 8, Section 1301 provides that an individual "may not knowingly make a false statement or false representation or knowingly fail to disclose a material fact to receive or increase a benefit or other payment under this title."

Md. Code Ann., Labor & Emp. Article, Section 8-1305(b) provides that an individual who violates Section 8-1301 shall make full restitution of the amount unlawfully received including interest at the rate of 1.5% per month until the full amount is recovered and is disqualified from receiving benefits for one year from the date on which a determination is made that the claimant filed a claim involving a false statement or representation, or failed to disclose a material fact.

Md. Code Ann., Labor & Emp. Article, Section 8-809(a) provides that "The Secretary may recover benefits paid to a claimant if the Secretary finds that the claimant was not entitled to the benefits because:

- (1) the claimant was not unemployed;
- (2) the claimant received or retroactively was awarded wages; or
- (3) due to a redetermination of an original claim by the Secretary, the claimant is disqualified or otherwise ineligible for benefits."

Md. Code Ann., Labor & Emp. Article, Section 8-809(b) provides that "if the Secretary finds that a claimant knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other payment under this title, in addition to disqualification of the claimant, the Secretary may recover from the claimant:

- (1) all benefits paid to the claimant for each week for which the false statement or representation was made or for which the claimant failed to disclose a material fact; and
- (2) interest of 1.5% per month on the amount accruing from the date that the claimant is notified by the Secretary that the claimant was not entitled to benefits received."

### **EVALUATION OF EVIDENCE**

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The Agency had the burden to show, by a preponderance of the credible evidence, that the claimant knowingly made a false statement or false representation, or knowingly failed to disclose a material fact in order to receive or increase his benefits. "In order to find a claimant disqualified under Section 8-809(b), it is not necessary fraud be proven 'beyond a reasonable doubt'." Cronhardt v.

Venture Vending, 854-BH-81.

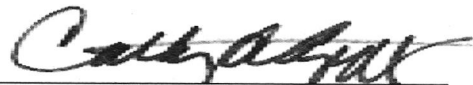
In the case at bar, the Agency met its burden of proving that the claimant either failed to report or underreport his wages, and also met the burden of proving that the claimant possessed fraudulent intent when doing so. The claimant admitted to knowingly "guessing" and reporting incorrect wages on his claims for benefits. The claimant's testimony that he was unaware of his rate of pay is not credible considering he signed an employment contract upon hire which would have indicated his rate and terms of pay. The claimant also would have also become aware of his rate of pay in mid-February when he received his first paycheck, yet he continued to underreport his wages. The claimant's weekly wages can be deducted to \$225.00 based on his total period of employment (16 weeks) and his total wages. The credible evidence shows the claimant knowingly failed to accurately report his wages when filing claims for the period in question in violation of the Maryland Unemployment Insurance Law, Section 1301.

Accordingly, the Agency met its burden in this case, proving the claimant knowingly made a false statement or false representation, and/or failed to disclose a material fact in order to obtain or increase his benefits, and is, therefore, disqualified from receiving benefits. Any benefits paid to the claimant are recoverable pursuant to Title 8, Section 809(b) and 1305.

### DECISION

IT IS HELD THAT the claimant knowingly made a false statement and/or failed to disclose a material fact in order to obtain or increase benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Sections 8-809(b) and 8-1301. Any benefits paid to the claimant during the period from January 22, 2012 to April 21, 2012, may be recovered along with the statutory rate of interest in accordance with Sections 8-809(b) and 8-1305(b)(1) and, the claimant shall be disqualified from receiving benefits for a period of one (1) year from May 2, 2012 through April 30, 2013 pursuant to Section 8-1305(b)(2).

The determinations of the Claims Specialist in Appeal Numbers 1217563 - 1217565, inclusive, are affirmed.



C A Applefeld, Esq.  
Hearing Examiner

### Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

**A request for waiver of recovery of overpayment does not act as an appeal of this decision.**

**Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.**

**Notice of Right to Petition for Review**

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A (1) appeals may not be filed by e-mail. Your appeal must be filed by July 02, 2012. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals  
1100 North Eutaw Street  
Room 515  
Baltimore, Maryland 21201  
Fax 410-767-2787  
Phone 410-767-2781

**NOTE:** Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: June 01, 2012  
BLP/Specialist ID: WHG6B  
Seq No: 002  
Copies mailed on June 15, 2012 to:

KIMBROUGH I. KELLY  
BALTIMORE CITY COMMNTY COLLEGE  
LOCAL OFFICE #63  
MARIA NOBLE