

- DECISION -

Claimant:
TRUXTUN C HOUSTON JR

Decision No.: 637-BR-04

Date: February 25, 2004

Appeal No.: 0331937

S.S. No.:

Employer:

L.O. No.: 64

Appellant: Claimant

Issue: Whether the claimant failed to file proper claims for benefits within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 901.

- 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: March 26, 2004

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. These facts establish that the claimant was entitled to benefits for the week ending October 11, 2003. The unemployment laws are intended to be remedial not punitive. The Board will not uphold the denial of one week of benefits because the claimant made the mistake of hanging up the telephone too soon.

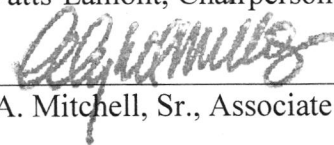
DECISION

IT IS HELD THAT the claimant filed a valid and proper claim for benefit within the meaning of Md. Code Ann., Labor & Employment Article, Section 8-901 and COMAR 09.32.02.04B. Benefits are allowed for the week ending October 11, 2003.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:
TRUXTUN C. HOUSTON JR
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

TRUXTUN C HOUSTON JR

SSN #

Claimant

vs.

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: 0331937

Appellant: Claimant

Local Office: 64 / BALTOMETRO

CALL CENTER

January 07, 2004

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant has filed proper claims for Unemployment Insurance benefits within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 901.

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits, establishing a benefit year effective January 5, 2003 and a weekly benefit amount of \$310.

The claimant attempted to file his telecert for the week ending October 11, 2003. The claimant had returned to work and he did not wish to file a claim for the week ending October 18, 2003. When the claimant got through answering the questions for Week One, he hung up. He did not remain on the line and complete his answers for Week Two and receive a processing number for his telecert. The claimant waited 15 days to receive a check. When he did not receive a check, he contacted the Agency and learned that he had failed to complete his telecert because he did not remain on the line and complete the answers for Week Two and receive a processing number. The claimant requested the claim be backdated to cover the week

ending October 11. When that request was denied, he filed the subject appeal.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-901 provides that an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the individual meets the requirements of this subtitle.

COMAR 09.32.02.04B(1) provides, in essence, that following an initial or reopened claim, a claimant shall file claims in the manner required by the Secretary.

COMAR 09.32.02.04B(2) provides that the Secretary may instruct the claimant to file a continued claim by:

- (a) Telephoning the Department's interactive voice responsive unit following the receipt by mail or electronic means of a telephone claim form covering a specific week or weeks.
- (b) First class mail using the paper claim form provided by the Secretary or by mail or electronic means which covers the specific week or weeks; or
- (c) Electronic means following receipt of a claim form by mail or electronic means which cover the specified week or weeks.

COMAR 09.32.02.04B(3) provides that continued claims shall be filed no sooner than the Sunday immediately following the close of the week or weeks for which the benefits are sought. If the claimant does not receive a claim notification within one week of the date on which the continued claim is required to be filed, the claimant shall contact the office to report not receiving the notification.

EVALUATION OF EVIDENCE

In this case, the credible evidence indicates that the claimant failed to file a proper claim for the week ending October 11, 2003. The claimant attempted to file a telecert but never completed that telecert. The instructions for completing a telecert clearly state that you must remain on the line until a processing number has been provided. The claimant failed to do so. If the claimant had followed the instructions for completing a telecert, he could have answered that he worked during Week Two and reported his earnings. That information would have been sufficient to close his claim, and he would not receive money that he was not otherwise entitled to. While his attempt to file for only one week by stopping in the middle of the telecert may have seemed reasonable to him, all of the instructions for the telecert system state that you must go through the entire process and receive a confirmation number to properly file a telecert. He clearly failed to do so when he hung up after completing the questions for Week One only. The same would have been true if he completed the questions for Week One and Week Two but did not remain on the line to receive the confirmation number as directed. Since the claimant failed to properly complete his certification for the week ending October 11, 2003, he is ineligible for the receipt of benefits for that period.

DECISION

IT IS HELD THAT the claimant failed to file valid and proper claims for benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 and COMAR 09.32.02.04B. Benefits are denied for the week beginning October 5, 2003 through October 11, 2003.

The determination of the Claims Specialist is affirmed.

J Smylie, 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 410-949-0022 or 1-800-827-4839. 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.

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 January 22, 2004. 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

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

Date of hearing: December 30, 2003
JHH/Specialist ID: WHG3B
Seq No: 002
Copies mailed on January 07, 2004 to:
TRUXTUN C. HOUSTON JR
LOCAL OFFICE #64