



*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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*Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	637-BR-91	
	Date:	May 31, 1991	
Claimant:	Kathleen H. Shepard	Appeal No.:	9107115
		S. S. No.:	
Employer:		L. O. No.:	20
		Appellant:	CLAIMANT

Issue: Whether the claimant was able, available 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 MAYBE 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 June 30, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant received a determination in the mail which stated that she hadn't provided any medical documentation of the extent of her "disability/handicap" (pregnancy). The determination disqualified her from October 21, 1990 "until meeting the requirements of the Law." The last date to appeal that decision was given as November 30, 1990.

The claimant responded by getting a form filled out by her doctor, who returned the form to the agency on November 30, 1990. On the form, the doctor stated that the claimant was pregnant but was not disabled at any time from working. The claimant later contacted the local office to inquire about her claim, and she was told that she would have to file an appeal. When she did, it was twelve days late.

It is not clear that the claimant ever even meant to file an appeal, or needed to file an appeal. The determination simply disqualified her "until meeting the requirements of the Law." It is unclear what this means,¹ but the claimant interpreted it as meaning that the penalty would be lifted if she provided a doctor's note.

The claimant's interpretation was reasonable. From the text of the determination, it is impossible to tell how the penalty can be eliminated, but it did prominently mention a doctor's note; the claimant's belief that she had eliminated the stated reason for the penalty, and thus had "met the requirements of the Law" without filing an appeal, was reasonable.²

Since the claimant reasonably believed, in reliance on the information sent her, she had nullified the penalty, she had good cause under Section 7(c)(3) for filing her appeal twelve days later.

On the merits, the claimant has shown clearly that she was able to work within the meaning of Section 4(c) of the law. In fact, she did work at a temporary agency much of the time. No penalty is appropriate under that section of the law based on the ability to work.

¹ This determination possibly violated the new agency regulations, which require that the determination explain "what the claimant must do to requalify for benefits or purge the disqualification." COMAR 24.02.02.16F(d).

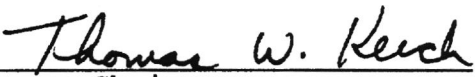
² This belief was not only reasonable -- it was correct. The claimant did not have to file an appeal to lift the penalty. Since she did eventually file an appeal, however, the Board must rule on it.

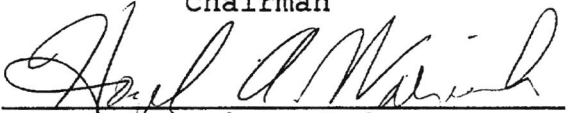
DECISION

The claimant filed a late appeal, but for good cause, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant was able to work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No penalty is imposed under Section 4(c) of the law based upon her ability to work. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The decision of the Hearing Examiner is reversed.



Chairman


Associate Member

K:H
kmb

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CLAIMANT

UNEMPLOYMENT INSURANCE - WALDORF



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

— D E C I S I O N —

Claimant:	Kathleen H. Shepard	Date:	Mailed: 04/2/91
		Appeal No.:	9107115 9017115
		S. S. No.:	
Employer:		L.O. No.:	20
		Appellant:	Claimant

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. Good cause to reopen this dismissed case under COMAR 24.02 .06.02(N).

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 April 17, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

FINDINGS OF FACT

A Notice of Benefit Determination denying the claimant benefits under Section 4(c) of the Law was mailed to the claimant at her current address on November 15, 1990. This determination established the last day to file an appeal as November 30, 1990. Because the medical form requested by the Agency had been

submitted to the claimant's doctor before the mailing of the notice, she believed that the form would be received in a day or two and did not understand that the appeal would be required by the, Agency. The claimant finally filed an appeal by a letter dated December 12, 1990 which was received by the Waldorf local office the following day.

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. The Maryland Unemployment Insurance Law, Section 7(c)(3) provides that:

"A determination shall be deemed final unless the party entitled to notice thereof files an appeal within fifteen days after the notice was mailed to his last known address or otherwise delivered to him; provided, such period may be extended by the Board of Appeals for good cause."

Here, the claimant had ample opportunity to file a valid and timely appeal but did not do so thinking that the medical form furnished by her doctor would solve the issue which was denying her benefits. This cannot be considered good cause because the instructions specifically state that an appeal must be filed by a certain time. Generally, a misreading of the date or the or a misunderstanding cannot be considered good cause. Since the claimant did not file her appeal within the fifteen-day Statutory period nor give good cause for her failure to do so, the Hearing Examiner does not have jurisdiction to consider the merits of the case, even though consideration of the merits of the case would resulted have in an affirmation of the Claims Examiner's determination.

No determination will be made on whether the claimant had good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(n).

DECISION

The claimant failed to file a timely appeal or give good cause for her failure to do so.

The determination of the Claims Examiner that the claimant was not able and available for work due to a disability or handicap stands. The disqualification

from benefits for the week beginning October 21, 1990 and until the claimant is not disabled or under a handicap remains unchanged.


Seth Clark ec
Seth Clark
Hearing Examiner

Date of Hearing: 2/20/91
ec/Specialist ID: 20691
Cassette No: 1154
Copies mailed on 04/2/91 to:

Claimant
Unemployment Insurance - Waldorf (MABS)