

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.:	659-BR-93
Date:	April 15, 1993
Claimant: Claristine Fields	Appeal No.: 92-CWC-682
	S. S. No.:
Employer:	L. O. No.: 43
	Appellant: CLAIMANT
Issue:	Whether the claimant failed to file proper claims for benefits within the meaning of §8-901 of the Labor and Employment Article.

— 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, 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 May 15, 1993

— 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's claim for the weeks ending October 24 and October 31, 1992 was issued through the U.S. mail to the claimant on October 22, 1992, signed by her on November 15, 1992 and received back by the agency on November 23, 1992. The claimant's mail was apparently being misdelivered at times by her local post office. The claimant visited her local unemployment insurance office on November 12, 1992 in an attempt to find out what to do about the claim card. When it arrived on the 14th, she signed it and mailed it back on the 15th.

The Board concludes that the claimant should be given the benefit of the doubt in this situation. Although the claimant has not proven beyond a reasonable doubt that the U.S. Postal Service delayed her claim card, the claimant's diligent efforts to keep her claim alive make it more likely than not that an outside agency (the U.S. Postal Services) was responsible for the original delay. The claimant has thus shown by a preponderance of the evidence that the filing of that card was delayed due to no fault of her own. In addition, the claimant personally visited the local office in order to find the card on November 12, 1992, that is, within the 14-day grace period. The claim should be considered filed as of that date. See, the Board's decision in Goven-Grande (659-BR-91).

Since the card for the weeks ending October 24 and October 31 was filed timely, the subsequent claim issued to the claimant was a continued claim, and the claimant has the benefit of the 14-day grace period provided by the regulations at COMAR 24.02.02.04B(4)(a). The card for the weeks ending November 7 and November 14 was received by the agency on November 28, 1992 and was thus filed timely.

The next four claim cards were not filed timely. Each was filed approximately one week after the 14-day grace period expired. This occurred because the claimant was receiving them late in the mail and sending them in when received.

It is true, as the Hearing Examiner noted, that the claimant was advised to visit the unemployment office in person if she had a problem with her claim cards. But it is also true that the claimant did visit her local office in person, on both November 12 and November 16th. On neither of these two occasions was she advised to do anything but wait. There was no evidence that she was advised that the cards which she kept receiving in the mail were invalid. She was instead given a toll-free number to call about the status of her checks.

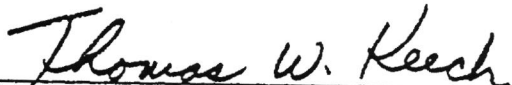
In the recent case of Marsiglia v. Board of Appeals (Baltimore County Circuit Court, #92 CV 6470), the Court found that where the agency unintentionally misinformed the claimant about the necessity of filing claim cards, the time limit for filing was

waived due to the "Department's error," within the meaning of COMAR 24.02.02.04B(4)(a). The same reasoning applies in this case. The totality of the agency's communications to the claimant in this case would lead any reasonable person to do exactly what she did do with respect to the claim cards. Under the regulation cited above, the 14-day timeliness provision was also not applicable in this case.

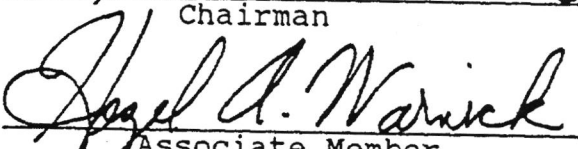
DECISION

The claimant's claims for the weeks ending October 24, 1992 through the week ending January 9, 1993 may not be denied due to the timeliness of the filing, within the meaning of §8-901 of the law and COMAR 24.02.02.04B(4)(a). The claimant is eligible for benefits for these weeks, provided she met the other requirements of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:HW

kbm

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CLAIMANT

UNEMPLOYMENT INSURANCE - WHEATON