



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor

RUTH MASSINGA  
 Secretary

# DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION  
 1100 North Eutaw Street  
 Baltimore, Maryland 21201  
 Telephone: 383-5032

BOARD OF APPEALS  
 THOMAS W. KEECH  
 Chairman  
 HAZEL A. WARNICK  
 MAURICE E. DILL  
 Associate Members  
 SEVERNE LANIER  
 Appeals Counsel

**-DECISION-**

|                          |  |                   |
|--------------------------|--|-------------------|
|                          | DECISION NO.:  | 838-BR-83         |
|                          | DATE:  | July 12, 1983     |
| CLAIMANT: Jay B. Salomon | APPEAL NO.:  | FSC-278           |
|                          | 1  |                   |
|                          | S.S.NO.:   |                   |
| EMPLOYER:                | L.O. NO.:  | 43                |
|                          | APPELLANT:   | CLAIMANT & AGENCY |
| ISSUE                    | Whether the Claimant is eligible for Federal Supplemental Compensation benefits within the meaning of §21(j) 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 MAY BE 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 August 11, 1983

**-APPEARANCE -**

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 Appeals Referee.

First of all , the Board disagrees with the Referee's conclusion that the local office of the agency cannot impose a §21(j) penalty concerning more than one week, even though similar circumstances obtained in each of those weeks . Since §21(j) applies to the Claimant's search for work during each week, the Claimant's activities during any week can give rise to a penalty under §21(j) of the Law. If circumstances which give rise to a §21(j) penalty in one week are repeated in another week, a new penalty under §21(j) is certainly justified.

The Board disagrees, however, that a penalty under §21(j) of the Law was justified at all. In this case, the Claimant was clearly engaged in a systematic and sustained effort throughout the week to obtain work and he clearly provided tangible evidence of that effort . The Claimant simply did not fail to actively engage in seeking work within the meaning of §21(J) of the Law. The Appeals Referee's decision upholding the first disqualification of the Claimant under §21(j) will therefore be reversed.

The agency has filed a letter with the Board in this case in which it indicates that §4(c) of the Law does apply to Federal Supplemental Compensation claims. The agency points out, correctly, that 521(b) of the Maryland Unemployment Insurance Law makes applicable to claims for Federal Supplemental Compensation all other sections of the Maryland Unemployment Insurance Law which do not conflict with the Federal laws concerning Federal Supplemental Compensation. There is no conflict between §4(c) of the Maryland Unemployment Insurance and the Federal Supplemental Compensation laws. Therefore, §4(c) of the law does remain in effect concerning claimants for Federal Supplemental Compensation. Of course , concerning the "actively seeking work" provision of 54(c), that provision has clearly been superseded by §21(j). The "availability" section of §4(c) of the Law, however, is not in conflict with any part of §21 of the law or the federal law setting up the Federal Supplemental Compensation program. Therefore, this section of the law is still applicable according to §21(b).

The Claimant, therefore, could be penalized under §4(c) of the Law from the receipt of Federal Supplemental Compensation benefits for any week in which he was not available for work within the meaning of §4(c) of the Maryland Unemployment Insurance Law.

The difficult question which arises in this case, however, is whether or not the acceptance of part-time work constitutes unavailability for work within the meaning of §4(c) of the Law. The Board has ruled in the past that the acceptance of part-time work is encouraged and accommodated by the Maryland Unemployment

Insurance Law and should not normally serve as a reason to disqualify a person from the receipt of unemployment insurance benefits. Indeed, in the normal case, it is absurd to say that someone is not available for work because he has found it. There may be cases, however, in which a claimant deliberately obtains part-time work for the purpose of avoiding full-time work. This, of course, is not the type of situation which was meant to be alleviated by unemployment insurance.

This case will be remanded to the Appeals Referee for a redetermination of the Claimant's eligibility for benefits under §4(c) of the Law for the weeks in question, since the Claimant was disqualified under 521(j). In making this determination, the Appeals Referee should determine whether the Claimant's status as a part-time worker was brought about by an earnest desire to seek any work available or by a deliberate attempt to avoid full-time work. If the Appeals Referee determines that the claimant was making an earnest effort to seek whatever work was available, no disqualification under §4(c) of the Law should be imposed. If, on the other hand, the Appeals Referee determines that the Claimant deliberately set about to obtain part-time employment for the purpose of avoiding full-time employment, a disqualification under §4(c) of the Law should be imposed.

DECISION

The disqualification imposed under §21(j) of the Law for the week beginning November 21, 1982 is rescinded. This disqualification imposed under §21(j) of the Law for the week beginning December 19, 1982 is rescinded.

The decision of the Appeals Referee with regard to §21(j) of the Law is reversed.

This case is remanded to the Appeals Referee for a new determination concerning the Claimant's eligibility under §4(c) of the law during the weeks in question. In making this determination, the considerations listed above in the Board's decision shall be addressed.

Thomas W. Keech  
Chairman

Harold A. Warrick  
Associate Member

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COPIES MAILED TO:

CLAIMANT

Maurice C. Ashley - U. I. Director

J. Martin Whitman - Appeals Referee

UNEMPLOYMENT INSURANCE - WHEATON



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 MARK R. WOLF  
 Administrative  
 Hearings Examiner

STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

- DECISION -

CLAIMANT: Jay B. Salomon  
 DATE: January 25, 1983  
 APPEAL NO.: FSC-278  
 S. S. NO.:  
 EMPLOYER:  
 L. O. NO.: 43  
 APPELLANT: Claimant  
 ISSUE: Whether the claimant is eligible for Federal Supplemental Compensation benefits within the meaning of Section 21 (j) of the Law.

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NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON February 9, 1983

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- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

OTHER: EMPLOYMENT SECURITY ADMINISTRATION:  
 Kevin Barry, Claims Specialist IV

FINDINGS OF FACT

The claimant appeals a non-monetary determination of the Claims Examiner denying him benefits, because he did not make a systematic and sustained effort to obtain work as required by Section 21 (j) of the Maryland Unemployment Insurance Law for the claim week ending November 27, 1982. He was then denied

Federal Supplemental Compensation benefits for the week beginning November 21, 1982 and until he becomes employed at least during four weeks, and has earned at least four times his weekly benefit amount (\$560).

The fact situation which relates to this non-monetary determination is exactly identical to a fact situation which relates to a separate and distinct non-monetary determination. The facts will be set forth hereinafter.

The claimant was subsequently denied on January 7, 1983 by a non-monetary determination unemployment insurance benefits, because again he failed to make a systematic and sustained effort to obtain work as required by Section 21 (j) of the Maryland Unemployment Insurance Law for the claim week ending December 25, 1982. The local Wheaton office representative of the Employment Security Administration stipulates that both non-monetary determinations are the subject of this appeal, since the claimant was told that. The claimant was then denied Federal Supplemental Compensation benefits for the claim week beginning December 19, 1982 and until he becomes employed during at least four weeks and has earned at least four times his weekly benefit amount (\$560). The local office and the claimant both understand that both determinations are the subject of this appeal since the fact situation is identical. Further, the claimant was informed in the appeal taken to the first non-monetary determination operates as though it was an appeal to the second non-monetary determination. The rationale that the local office used in writing the second non-monetary determination was that, in fact, after writing the first non-monetary determination, the claimant, in fact, earned a total amount of \$560, but the local office believes that his fact situation did not change at all, and that he should be continually denied under Section 21 (j) of the Law. It sought to have him denied under Section 4 (c) of the Law, and administratively was told that this was not the appropriate Section.

The claimant last worked full-time in his own advertising agency sometime during the summer of 1981. He is a college graduate and has earned a Master's Degree of Business Administration.

He filed for Federal Supplemental Compensation benefits on November 26, 1982.

The claimant, after becoming unemployed, decided to start teaching at the Towson State University located in Baltimore County. The claimant continues to reside in Gaithersburg, Maryland. He had a contract whereby he taught two courses from September 1, 1982 through December 22, 1982. These courses met on Tuesdays and Thursdays from 8 a.m. to 9:15 a.m., and again

from 2 p.m. to 3:15 p.m. He, in effect, maintains that he is otherwise conducted a systematic and sustained effort to sustain work during the time that he was not engaged in teaching.

The claimant has already signed contracts and obligated himself to commence teaching on January 27, 1983 and continue until the middle of May, 1983 at the same university as a part-time instructor. He will begin to teach courses on January 27, 1983 through May, 1983 from 8 a.m. to 10:45 a.m. on Tuesdays and Thursdays. He also has a third course which he will be teaching from 4 p.m. to 6:45 p.m. on Thursdays only.

The claimant has completed the necessary documents to show that he has searched for work on several different days on every claim week, when he is otherwise not been teaching. The claimant explains that he has been looking for a full-time, permanent position in either the teaching field or the advertising field.

The claimant is not able to explain why he would be able to accept a job in either teaching or advertising, when he has had a continuing contractual obligation, starting with September and, except for the time between terms, continues to have the obligation until the middle of May, 1983. He explains he intends to fulfill his teaching commitments even before he signed the contract. When questioned as to whether he would accept a job that would interfere with his teaching schedules, he indicates he would not do so. He cannot explain how he could accept possibly a full-time job even if one was offered to him or how he could search for full-time job when he knows that he is occupied on Tuesday and Thursday mornings, and has been so since September 1, 1982, and will continue to be so after the time between semesters, May, 1983. He also has had the teaching requirements of teaching in the afternoons on Tuesday and Thursday up until December 22, 1982, and will again have to be teaching on Thursday evenings from 4 to 6:45 p.m., after January 27, 1983. He explains that he is a creative person and that as a creative writer in advertising, he could be hired on a part-time or full-time basis even with these commitments. There is no question that he is documented the various places where he has searched for work in person. The question appears to be whether one can make a systematic and sustained search for work when one has pre-existing job requirements at the Towson State University. One also must examine the length of travel between Gaithersburg, where the claimant lives, and his commitment to teach, twice weekly, at Towson State in Baltimore County, and to return again.

An ancillary question on the appeal is whether the local office may, in fact, deny the claimant benefits under the same set of facts under Section 21 (j) of the Law twice, simply because the claimant's situation has not changed, and he may have surmounted by earnings \$560.00 and, therefore, become re-eligible for Federal Supplemental Compensation.

#### CONCLUSIONS OF LAW

With regard to the second ancillary question on the appeal, it is clear that the local office has exceeded the jurisdiction in finding that the claimant was ineligible twice under the same set of facts, even though during the different time span under Section 21 (j) of the Law. In carving out the legal perimeters of the disqualification under this Section of the Law, it was not up to the local office to decide whether it should be a continuing disqualification as might be envisioned under Section 4 (c) of the Law, which addresses itself to whether a claimant is able to work, available for work; and actively seeking work under the unemployment insurance law.

It is specifically held that under Section 602 of the Federal Supplemental Compensation Act of 1981, the Federal Supplemental Compensation benefits are unique, separate and apart from regular unemployment insurance benefits and as such, Section 21 (j) becomes operative when measuring whether a claimant is eligible. Section 4 (c) of the Law is not operative. It is not up to the local office to continually deny benefits under Section 21 (j) of the Law. The disqualification is set forth in the Statute and cannot be enlarged upon by the local office's decision to do so more than on one occasion.

The core of this case is whether the claimant has made a systematic and sustained effort to obtain work as required by Section 21 (j) of the Law. The documentation of the local office would clearly indicate standing of itself that the claimant may have done so. However, a rational and meaningful approach must be used as a governing yardstick in determining whether one conducts a systematic and sustained effort to obtain work as required by this Section of the Law. It has been held that a systematic effort to obtain work is an effort which proceeds according to a rational plan or method and organizes contacts with employers in a matter likely to achieve a positive result. A sustained effort to obtain work is a continual effort, maintained at length throughout the week. It has been held that where a claimant contacts a number of employers on one day, this cannot be considered as making a sustained effort to obtain work, and likewise, if an irrational plan is organized where repeated contacts are made with a continued limited group of employers that has not been held to be a systematic effort to



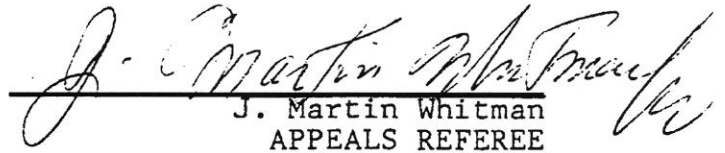
obtain work. In this case, the claimant is clearly restricting his work seeking activities. He cannot and will not accept a job which interferes with his pre-existing commitments at Towson State University and which commitments will extend themselves immediately after the current term which is in between semesters. The claimant as either a teacher or an advertising person must generally be available for full-time work under this Section of the Law. The claimant restricts his availability, because, in each case, on Tuesdays and Thursdays, he is not available in the morning hours to look for work because he is teaching, and in each case, he is not available on Thursday afternoons. It is true that in between semesters, he may have been available for work. However, availability to look for work and accepting a full-time, permanent job must go hand in hand and coupled together. The claimant could hardly accept a permanent; full-time position that had definite hours of work, because he has a commitment which will commence again on January 27, 1983 and continue for the next several months when the new spring semester commences. The claimant intends to live up to this obligation. He, thus, is looking for a job that will work around his part-time teaching occupation at the Towson State University. Such a position may or may not exist. The claimant has imposed restrictions on his being able to conduct a systematic and sustained effort to look for work. He is, therefore, ineligible under Section 21 (j) of the Maryland Unemployment Insurance Law, because he is making a systematic and sustained effort, but with severe restrictions, to obtain work. When one does so, one defeats the entire purpose of the requirement to look in a systematic and sustained effort under Section 21 (j) of the Law. The claimant must be denied under this Section of the Law.

#### DECISION

It is found that the second disqualification issued by the local office under Section 21 (j) of the Law, namely, for the week beginning December 19, 1982 and until the claimant becomes employed during at least four weeks and having earned at least four times his weekly benefit amount (\$560). It is not proper and the net effect of this decision is to declare that determination void and that disqualification is overruled.

The claimant has not been conducting a systematic and sustained effort to obtain work as required by Section 21 (j) of the Maryland Unemployment Insurance Law during the week ending November 27, 1982. He is disqualified from receiving benefits under that Section of the Law for the week beginning November 21, 1982 and until he becomes employed during at least four weeks, and has earned at least four times his weekly benefit amount (\$560).

The determination of the Claims Examiner disqualifying him under Section 21 (j) of the Law for the claim week beginning November 21, 1982 and until the claimant becomes employed during at least four week and has earned at least four times his weekly benefit amount (\$560) is, hereby, sustained, but the disqualification rendered by the same Claims Examiner for the claim week beginning December 19, 1982 and until the claimant becomes employed is, hereby, rendered not permissible and, therefore, rescinded.

  
J. Martin Whitman  
APPEALS REFEREE

Date of Hearing - 1/18/83  
cd/7451 & 3637  
(223/Esrig)

COPIES MAILED TO:

Claimant

Unemployment Insurance - Wheaton