



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 10-BH-82

DATE: Jan. 8, 1982

APPEAL NO.: 20510

S. S. NO.:

CLAIMANT: Claudette E. Glascoe

EMPLOYER: Regional Planning Council

L. O NO.: 1

APPELLANT: CLAIMANT

ISSUE Whether the claimant performed services in employment within the meaning of Section 20(g) of the Law; whether a previous overpayment of unemployment insurance benefits is recoverable from current compensable claims under the provisions of Section 17(d) 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 SUPERIOR 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

February 7, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Claudette E. Glascoe - Claimant
Robert Schultz - Atty. At Law

FOR THE EMPLOYER:

Sue Kenney-
Adm. Spec.
Hazel Woodsen-
Operations Spec.
Tom Evans-
Staff Atty.
John Van Derveer-
Pers. Dir.

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed by the Regional Planning Council from October 1, 1978 through May 15, 1979 in a work-study program. She was a full-time student and the money for her earnings was provided by a federal grant to the Employer.

The Claimant applied for benefits with an effective date of June 10, 1979. She received twenty-one checks in the amount of \$103.00 each for the weeks between August 11, 1979 and November 17, 1979 and also from May 3, 1980 to June 7, 1980.

When this claim was filed, the Regional Planning Council was sent an agency Form 207, on which it was supposed to indicate the reason why the Claimant was separated from employment. The Employer responded by returning the form with the required information, including a statement that the Claimant was separated for a reason other than lack of work, namely, the "expiration of work-study agreement." The Employer was not sent an agency Form 221/222 (non-monetary determination) nor any further notification from the agency with regard to this claim. Therefore, the Employer did not appeal the determination granting benefits to the Claimant in 1979, since it had no notice of that determination.

It was not until approximately September 24, 1979 when the agency sent the Employer the statement of reimbursable benefits paid for the period ending June 30, 1979, that the Employer became aware that the Claimant was receiving benefits. This was the first notice to the Employer that the Claimant had received unemployment insurance benefits based on her earnings with the Regional Planning Council.

The Employer protested these charges in a letter to the agency, dated October 10, 1979 on the basis that the wages earned in a work-study program are not considered covered earnings.

Correspondence on this issue between the Employer and the agency continued, resulting eventually in the Employer filing an appeal of benefit charges placed on its account, which were attributable in part to the Claimant's benefits, by Petition No. 3085, pursuant to Section 8(g) of the Law.

On April 15, 1981, the Executive Director issued a Determination No. 2573, in response to Petition No. 3085. That determination found that service with the Regional Planning Council was not employment as that term is defined in Section 20(g)(7)(v) G. of the Law.

The Executive Director ordered that "overpayments are to be established" in the cases of the claimants named in Petition Number 2085.

The Claims Examiner then issued a determination on August 20, 1981, finding the Claimant's earnings from the Regional Planning Council were not in covered employment and that the benefits she received between August of 1979 and June, 1980 were paid in error. This determination stated that the Claimant was overpaid \$2,363.00 for the twenty-one weeks in question. (This figure is apparently a clerical error. During the twenty-one weeks in question, the Claimant apparently received \$103.00 per week for a total of \$2,163.00.)

The Claimant appealed this decision to the Appeals Referee under Section 7 of the Law. The Appeals Referee affirmed the determination of the Claims Examiner. The Claimant then appealed to the Board.

CONCLUSIONS OF LAW

Prior to the hearing before the Board on December 8, 1981, the Board issued to all parties a Pre-Hearing Order, setting forth some subsidiary issues to be considered in order to reach a decision in this case.

Issue #1. Whether the Claimant performed services in employment within the meaning of Section 20(g) of the Law.

All parties, including the Employment Security Administration, stipulated before the Board of Appeals that, regarding the Claimant's benefit year beginning June 10, 1979, the Claimant was working under a work-study program for the Employer and, therefore, the Claimant was not performing services in employment, within the meaning of Section 20(g)(7)(v) G.

Issue #2. Whether the Employer failed, without good cause, to protest the Claimant's original application for benefits, effective June 10, 1979, in a timely manner, within the meaning of Section 7(c)(ii) of the Law.

The Claimant has repeatedly raised the issue of the inequity of ordering her to repay benefits that were awarded two years prior to the determination of an overpayment. The Board raised issue #2 because if the Employer could have raised the question of Section 20(g) when the Claimant originally filed for benefits, and failed to do so, without good cause, then there might be statutory support for the Claimant's contention.

Section 7 sets strict fifteen day time limits for appeals for determinations and mandates that determinations are final if not appealed on time. This would appear to support the Claimant's position. However, Section 17(f) allows a three year period for recoupment of benefits overpaid.

At first glance, there is some conflict between the Section 17(f) and Section 7(c)(ii) of the Law. If, in fact, the Board found that the determination originally granting the benefits to the Claimant was final, within the meaning of Section 7(c)(ii) of the Law, then the Board would have had to reach issue #3 of the Pre-Hearing Order and resolve this potential conflict in the Law. However, the Board finds that the Employer was entitled to notice of the determination (Agency Form 221-222) in the Claimant's case and that the agency, through simple error, did not notify the Employer of the determination made upon the Claimant's claim.

The Employer's response to agency Form 207, although not detailed or explicit, was more than sufficient to notify the agency that this was not a totally uncontested claim and that the Employer should receive notice of the determination. See, Employer Exhibit No. 1. Therefore, the Board concludes that, in fact, the Employer had good cause for failing to protest the Claimant's original application for benefits in a timely manner within the meaning of Section 7(c)(ii) of the Law, since the Employer never received notice of that determination. Therefore, a final determination of the Claimant's claim, within the meaning of that section, was never made.

Although the Board is sympathetic to the Claimant's argument of the inequity of being required to repay money after such a long period of time, this state of affairs was not the fault of the Employer. Equity, as well as the statute itself, demands that proper notice be given to an employer who has a direct financial stake in the outcome of a determination.

Under normal procedures, the Board would at this point remand this case for a new hearing and determination by the Appeals Referee regarding the Claimant's original claim for benefits. However, since the parties, including the Claimant, have already stipulated that the Claimant did not perform services in covered employment under Section 20(g), there is no necessity for a remand in this case.

Issue #3. Whether the Executive Director has the authority under Section 8(g), 17(d), and 17(f) to order retroactive cancellation of wage credits and the creation of overpayments on behalf of a party who has let his rights to contest a claim lapse under Section 7 of the Law.

Since the Board has found that the Employer did not allow its right to contest a claim lapse, this issue is moot.

DECISION

The Claimant was not performing services in employment within the meaning of Section 20(g) of the Law. She is disqualified from receiving benefits beginning June 10, 1979, and until determined as monetarily eligible.

Any overpayment shall be recovered in the manner described in Section 17(d) of the Law. The local office is instructed to recalculate the amount of the overpayment in conformance with this decision.

The decision of the Appeals Referee is affirmed.

Gayle A. Warnick
Associate Member

Thomas W. Keech
Chairman

K:W
zvs
(#40)

DATE OF HEARING: December 8, 1981.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Robert H. Schultz, Esquire

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
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 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

- DECISION -

CLAIMANT: Claudette E. Glascoe
 DATE: Sept. 21, 1981
 APPEAL NO.: 20510
 S.S. NO.:
 EMPLOYER: Regional Planning Council
 L. O. NO.: 1
 APPELLANT: Claimant
 ISSUE: Whether the claimant performed services in employment within the meaning of Section 20(g) of the Law.

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 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON October 6, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Claudette E. Glascoe - Claimant
 Robert H. Schultz - Attorney at Law

FOR THE EMPLOYER:

Sue Kenney &
 Hazel Woodson -
 Administrative
 Specialist and
 Operations Special-
 ist, Respectively

FINDINGS OF FACT

The claimant's appropriate benefit year began on June 10, 1979. Her weekly benefit amount then was \$103.00 and she had formerly been employed by the Regional Planning Council from October 1, 1978 through May 15, 1979 as a student and employee on the Work

Study Program. The claimant was a full- student during this period of time and received income by a grant while on the Work Study Program. Pursuant to Executive Determination #2573 dated April 16, 1981 in the matter of the same employer, for a similar issue, the Executive Director had determined that under Article 95A Section 20(g)(7)(v) G, that the remuneration in this type of Work Relief or Work Training Program is not considered wages for the determining of monetary eligibility during an individual's base period. As a result of this determination the Local Office and Claims Examiner reran the claimant's eligibility and found that with the deletion of the money received while on the Work Study Program, the determination of monetary eligibility showed earnings during the base period in one calendar quarter only, that being the first calendar quarter of 1978. The deleted earnings from Regional Planning Council Work Study Program were lost from the fourth calendar quarter. The claimant shows earnings in only one calendar quarter during her base period.

COMMENTS

Pursuant to Section 20(g)(7)(v) G of Article 95A, earnings from a Work Study Program cannot be used to calculate or determine monetary eligibility and therefore the claimant's initial listing of earnings from Regional Planning Council during the Work Study Program must be deleted. In order to be eligible for benefits an individual must demonstrate a qualifying amount of wages during their base period and also must show covered wages in two of the four calendar quarters of the base period. The claimant's deletion of wages and the rendering of wages in only one calendar quarter renders the claimant not monetarily eligible during the benefit year of June 10, 1979.

DECISION

The claimant was not meeting the eligibility requirements of Section 4(d) as applied by Section 20(g)(7)(v) G of the Maryland Unemployment Insurance Law.

The claimant is disqualified for the receipt of unemployment insurance benefits beginning June 10, 1979 and until determined as monetarily eligible.

Any overpayment shall be recovered in the manners prescribed by Section 17(d) of the Law.

The determination of the Claims Examiner is affirmed.


Arthur J. Novotny, Jr.
APPEALS REFEREE

DATE OF HEARING: September 10, 1981
ras
(9096 --- Herbert)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Baltimore

Robert H. Schultz -