

-DECISION-

Claimant:
DEBORAH J LEE

Decision No.: 1623-BH-02

Date: June 12, 2002

Appeal No.: 0206537

Employer:

S.S. No.:

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: July 12, 2002

- APPEARANCES -

FOR THE CLAIMANT:

Present

AGENCY

Not Present

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The Board notes that the Agency, duly notified of the date, time, and place of the hearing, failed to appear. The Agency failed to put on any witnesses or evidence as to its practices and procedures. The Board finds credible the uncontradicted testimony of the claimant.

The Board finds troublesome an electronic benefits system in which a claimant cannot consistently and regularly obtain the assistance of a live person. It is also troublesome that the claimant in this case was unable to leave a message with a live person for several weeks and furthermore, was told by the Agency **not** to come into her local office in person to seek assistance. While the utilization of technology may theoretically aid in the efficiency of the Agency's benefits system, it cannot be so efficient as to deny a claimant due process. While the Board makes no finding that the Agency's telecert and claims system as a whole denies claimants due process, the Board does find that the Agency's system did so on the narrow facts of this case.

FINDINGS OF FACT

The claimant initiated a claim for benefits effective November 4, 2001. She qualifies for a weekly benefit amount of \$280.00.

The claimant filed her telecert claims timely. Because the claimant had been receiving benefits using the telecert system, she knew how to operate the claims system. For reasons unknown, the Agency's telecert computer system informed the claimant on or about January 20, 2002 that she was filing her claim "too early". The claimant waited a reasonable amount of time and re-filed the claim. The telecert system would not accept her claim.

The claimant tried for *weeks* to contact a "live person" to answer questions regarding her continuing claims for benefits. On one occasion, an Agency representative told the claimant that she could **not** come into the local office and speak with someone in person. This representative transferred the claimant's call to two different Agency representatives for telephonic assistance, but each time was "dumped" into the Agency's voicemail system. The claimant was unable to leave a message, as each representative's voicemail box was full.

On other occasions, the claimant called the Agency and pressed the proper selection to speak with an Agency representative. The claimant would sometimes be "on hold" **for over an hour**. Whenever the claimant was transferred to an Agency representative's telephone line, she was again "dumped" into voicemail. The claimant was unable to leave a message as the voicemail boxes were always full.

The claimant finally searched and found another telephone number for the Agency. By chance she found an Agency representative who was able to assist her with her claim. For the first time, the claimant was told that her case had been closed. The Agency representative re-opened the claimant's claim for benefits for the week beginning February 24, 2002, and placed the claimant back onto the proper schedule for filing telecerts.

CONCLUSIONS OF LAW

Md. Code Ann., Lab. & Emp. Art., 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 Secretary finds that the individual meets the requirements of this subtitle.

COMAR 09.32.02.03(D)(4) provides that the effective date of an initial or reopened claim may be other than as provided in COMAR 09.32.02.03(C) when there is a clerical error attributable to the Department.

The Board also has the inherent power to backdate claims for benefits when it finds that a claimant's due process rights have been violated.

The findings of fact and evaluation of evidence are adopted and incorporated herein by reference. The Board finds that the claimant used due diligence in filing proper claims. Because of Agency error and repeated Agency systemic problems, she was not able to get the proper or adequate assistance to file her claim for benefits to which she was otherwise entitled. The Board finds that the situation in this particular case, where the claimant was not able to utilize the Agency's benefits claims system because of Agency error or negligence, resulted in the claimant's unwarranted denial of some 5 weeks of benefits and a denial of due process.

The Board finds that based upon a preponderance of the evidence in the record, the claimant has the right to have her claims backdated for the week beginning January 20, 2002 and through the week beginning February 17, 2002 within the meaning of Section 8-901 and COMAR 09.32.02.03(D)(4). The decision of the hearing examiner shall be reversed.

DECISION

Due process requires that the claimant shall have her claims for benefits for the week beginning January 20, 2002 through February 23, 2002 backdated and filed. Therefore, the Board holds that claimant filed timely backdated claims for the weeks beginning January 20, 2002 and through the week beginning February 17, 2002 within the meaning of Section 8-901 and COMAR 09.32.02.03(D)(4). Benefits for this period are allowed, provided the claimant meets the other requirements of the law.

The decision of the hearing examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member

Hazel A. Warnick, Chairperson

Date of hearing: June 11, 2002

Copies mailed to:

DEBORAH J. LEE

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

DEBORAH J LEE

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: 0206537
Appellant: Claimant
Local Office : 64 / BALTOMETRO
CALL CENTER

April 10, 2002

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 initiated a claim for unemployment insurance benefits effective November 4, 2001. She qualifies for a weekly benefit amount of \$280.00.

After filing her claim for benefits correctly for a couple of months, the claimant ceased doing so as of the week beginning January 20, 2002. The claimant acknowledges that she lost track of when to file her claims for benefits. Apparently, when the claimant first filed she was informed that it was too early. Thereafter, the claimant was advised that her claims were untimely. Despite these problems, the claimant called on a regular basis without success of filing her proper telecert claim. The claimant made some attempt to contact an individual to discuss this problem, but without success until the week of February 24, 2002. At that time the problem was rectified. The claimant did not receive benefits for the five week period between January 20 and February 23.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-901 (Supp. 1996) 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.

EVALUATION OF EVIDENCE

During the period of January 20, 2002, to February 23, 2002, the claimant ceased filing claims in a timely manner. It is unfortunate that the claimant lost track of properly filing claims, and had difficulty reaching a representative of the Office of Unemployment Insurance. Nevertheless, the claimant was not in compliance with the law in filing proper and timely claims to receive her benefits. Therefore, the claimant must be denied benefits during the period at issue pursuant to Section 901 of the Maryland Unemployment Insurance Law.

DECISION

It is held that the claimant filed untimely claims for the week beginning January 20, 2002 and through February 23, 2002 within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 (Supp. 1996) and COMAR 09.32.02.04B(4). Benefits are denied for that period.

The determination of the Claim Specialist is affirmed.

S B Karp, 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 April 25, 2002. 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 : April 04,2002
DW/Specialist ID: RBA28
Seq No: 003
Copies mailed on April 10, 2002 to:
DEBORAH J. LEE
LOCAL OFFICE #64