



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383 - 5032

—DECISION—

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 190-BR-84

DATE: February 24, 1984

APPEAL NO.: 13674

S.S. NO.:

CLAIMANT: Sally L. Wilburn

EMPLOYER: Tressler-Lutheran Service, Inc.

L.O. NO.: 3

APPELLANT: CLAIMANT

ISSUE: Whether the claimant was unemployed within the meaning of §20(1) of the Law; and whether the claimant has received benefits for which she was ineligible because she received or has been retroactively awarded wages within the meaning of §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 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 March 25, 1984

—APPEARANCE -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals adopts the findings of fact of the Appeals Referee, but disagrees with his conclusions of law.

The claimant was unemployed within the meaning of §20(1) of the Maryland Unemployment Insurance Law at the time she filed for and received Unemployment Insurance Benefits. The Maryland Court of Appeals stated in Waters v. Maryland Unemployment Insurance Fund, 220 Md. 337, 152 A.2d 811 (1959) that it would be:

. . . an unwarranted construction of the words "wages payable" as used in [§20(1)] of the Act in defining "unemployed" as meaning not "wages currently payable" but "wages legally due and payable upon a contingency" . . .

Id. at 348, 152 A.2d at 817.

Although §20(1) is not the proper disqualification for a person who receives retroactive back pay, the case of Katsianos v. Maryland Employment Security Administration, 92 Md. App. 688, 402 A.2d 144 (1979) makes it clear that §17(d) of the law is an independent disqualification from benefits in the case of a person who later receives back pay to cover the period during which unemployment benefits were obtained.

The question in this case was whether the claimant received "retroactively awarded wages" within the meaning of §17(d) of the law and the Waters and Katsianos cases. This claimant was awarded back pay by an arbitrator for the National Labor Relations Board, but the claimant actually received less than 50% of the amount of wages she would have earned, had she never been fired.

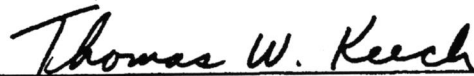
For the reasons more fully stated in the Wilhelm case (Bd. Dec. No. 139-BH-84), the Board concludes that this payment is not an award of back wages within the meaning of §17(d) of the law as interpreted by the courts in Katsianos v. Maryland Unemployment Security Administration, 42 Md. App. 688 (1979) and Waters v. State, 220 Md. 337 (1959).

DECISION

The claimant was unemployed within the meaning of §20(1) of the Maryland Unemployment Insurance Law during the time between August 31, 1980 and July 4, 1981.

The claimant did not receive back pay within the meaning of §17(d) of the law, as that section is interpreted by the courts of Maryland.

The decision of the Appeals Referee is reversed.



Chairman



Associate Member

K:W
kbm

Date of Hearing: December 8, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Sally L. Wilburn

DATE: Jan. 3, 1984

APPEAL NO.: 13674

S. S. NO.: - - - - -

EMPLOYER: Tressler-Lutheran Service
 Associates , Incorporated

L. O. NO.: 3

APPELLANT: Claimant

ISSUE: Whether the claimant was unemployed within the meaning of Sections 4 and 20(1) 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 **January 18, 1984**

-APPEARANCES-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Sally L. Wilburn - Claimant
 Romaine Franklin - Public Benefits Advocate
 of the Human Resource Development Commission
 of Allegany County

Not Represented

FINDINGS OF FACT

The claimant had worked for a period of time as a nursing assistant at the employer's Tressler-Lutheran Services Home. She was discharged from employment sometime approximately in July 1980. Eventually, she and others filed a petition before the National Labor Relations Board for an alleged unfair labor

practice in connection with her separation from employment. Eventually, an Administrative Law Judge heard and decided the case, and decided in favor of the claimant and others. The Administrative Law Judge decided that: "In any event, even if there might arguably be some basis for Wilburn's discharge resulting from her mention of the parking lot incident, and I hold there was not, nevertheless Wilburn's at best minor breach of Roque's warning was merely a pretextual reason for her discharge, her union activities being Respondent's real motivation." Thus, the Administrative Law Judge held in favor of the claimant in this case. Among other things, he awarded her reinstatement of the equivalent- in her former position and "to make them whole for any loss of earnings they may have suffered by reason of their discharges, by paying them a sum of money equal to that which they would normally have earned absent the discharges and suspensions.. ." Thus, the claimant was paid back wages by virtue of the National Labor Relations Board Administrative Law Judge's decision. She was paid, in effect, wages as a result of this decision from July 19, 1980 through approximately January 1, 1983.

Subsequently, the employer notified the Department of Employment and Training of this award and order, and the Department of Employment and Training found that the claimant was not unemployed as a result of receiving back wages from August 31, 1980 to July 4, 1981, and the claimant appeals.

There has no appeal from the National Labor Relations Board Administrative Law Judge's award and decision. The claimant did negotiate with the employer and accepted less than one-half of the monies to which she was otherwise entitled by way of a final settlement. She ultimately received \$7,318 in back wages and \$4,682 with interest thereon, or a total of \$12,000 less any, deductions.

CONCLUSIONS OF LAW

The evidence reveals that while the claimant clearly did not perform any services within the time frame involved, she did receive wages for the weeks in question. As a matter of fact, specifically, the Administrative Law Judge's decision was that she was to be paid back wages or earnings. She, in fact, negotiated a settlement of less than fifty percent of this amount, but for the period of time on appeal in question in this case, it is clear that she has received back wages as a result of the National Labor Relations Board Administrative Law Judge's decision and, hence, she cannot be considered as unemployed.

The definition of unemployment is contained in Section 20(1) of the Law and states:

“An individual shall be deemed ‘unemployed’ in any week during which he performs no services and with respect to which no wages are payable to him”

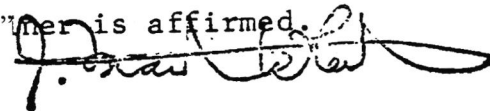
In this case, the claimant did not perform any services, but the claimant did receive back wages and, hence, must be considered as not unemployed under Section 20(1) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was not unemployed within the meaning of Sections 4 and 20(1) of the Maryland Unemployment Insurance Law.

She is disqualified from receiving benefits for the week beginning August 31, 1980 until July 4, 1981.

The determination of the Claims Examiner is affirmed.



J. Martin Whitman
APPEALS REFEREE

DATE OF HEARING: December 8, 1983

ras

(9361 -- Dudley, Jr.)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Cumberland