



**DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383 - 5032  
- DECISION -

STATE OF MARYLAND  
HARRY HUGHES  
Governor  
KALMAN R. HETTLEMAN  
Secretary

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

DECISION NO.: 16-BH-83  
DATE: January 10, 1983  
APPEAL NO.: 11533  
S. S. NO.:

**CLAIMANT:** Gilbert G. Schmidt

**EMPLOYER:** Monumental Life Insurance Co.

L. O NO.: 40  
APPELLANT: CLAIMANT

**ISSUE** Whether the Claimant is eligible for benefits pursuant to § 3(b) of the Maryland Unemployment Insurance 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 9, 1983*

**- APPEARANCES -**

**FOR THE CLAIMANT:**

Gilbert G. Schmidt - Claimant  
Thomas Bollinger - Attorney  
Jean Schmidt - Witness

**FOR THE EMPLOYER:**

Christopher Miles -  
Reed, Roberts  
Wilbert Ring -  
District Manager

**EVALUATION OF THE EVIDENCE**

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.

Although the Claimant raised an issue concerning his receipt of some type of vacation pay or vacation commission credit from the employer, the evidence on this type of payment, in the absence of the actual contract, is so vague that the Board is unable to make any factual findings about the details of this vacation pay. Since the Claimant raised this issue, the burden is on him to produce sufficient evidence in order for the Board to make findings of fact concerning this issue. Since this was not done, the Board will make no findings of fact or conclusions of law on the vacation pay issue .

The Board apologizes for the delay in the issuance of this decision. The Board notes, however, that this delay was exacerbated by the disruption of the Board office caused by the Claimant's wife's continual phone calls and inquiries to the Board during the period after the hearing.

#### FINDINGS OF FACT

The Claimant was employed for over 31 years as an agent for the Monumental Life Insurance Company. His last day of work was July 1, 1982. His duties included selling life insurance and collecting premiums on life insurance policies previously sold.

His contract provided for a minimum commission payment of \$75.00 per week if his commissions failed to reach that level. During none of the periods in question did the Claimant ever actually receive this \$75.00, since his commissions were always higher than \$75.00. Between April of 1981 and August of 1981, the Claimant received \$15 per week car allowance in addition to his commission. The Claimant did not have to account to his employer in any way for this car allowance. The services which the Claimant performed for this car allowance were identical to or at least similar to his regular collection duties.

The Claimant was under the supervision and control of the Monumental Life Insurance Company in the performance of his duties. He did not hold himself out as, nor did he operate as, an independently established businessman. The Claimant was prohibited by the terms of his employment contract from working for any other insurance company at the time of his employment with Monumental .

The Claimant filed a claim for unemployment insurance benefits with an effective date of July 4, 1982. For the purposes of calculating this monetary eligibility for benefits under the Maryland Unemployment Insurance Law, his base year consists of the second, third and fourth quarters of 1981 and the first quarter of 1982.

CONCLUSIONS OF LAW

Regarding the Claimant's contention that the Claimant's employment is covered under § 20(g) (6) in spite of the provisions of § 20(g) (8) (xvii), the Board finds this contention without merit. The purpose of § 20(g)(6) is to make clear that the common law relationship of master-servant is irrelevant to the concept of covered employment under the Maryland Unemployment Insurance Law. Section 20(g)(8) is a list of exceptions from the concept of covered employment. An examination of the other provisions of § 20(g) (8) shows that many of the types of service exempted by § 20(g)(8) clearly would meet the requirements of § 20(g)(6). Section 20(8) is, therefore, a list of exceptions for services that would otherwise be covered by § 20(g)(6). The Claimant, therefore, has to both meet the requirements of § 20(g)(6) and prove that he does not fall under the exception in § 20(g)(8) (vii).

The Claimant's services clearly do meet the requirements of § 20(g)(6). The only question, therefore, is whether the Claimant's services are exempted by § 20(g) (8) (viii).

The period in question is the Claimant's base year, that is, the second, third and fourth quarter of 1981 and the first quarter of 1982. During this period, the majority of the Claimant's compensation was clearly derived from sales commissions.

The first question which the Board of Appeals must consider is whether or not the provision of the contract which guaranteed a minimum commission of \$75.00 per week takes the Claimant's remuneration out of the 20(g) (8) (xvii) exception. It is important to note that, although this \$75.00 provision was in the contract, the Claimant actually never received any compensation from this minimum commission provision.

In the case of people's Life Insurance Company v. Maryland Department of Employment Security, 236 Md. 350, 260 A.2d 287 (1970) the Court of Appeals stated that, where "compensation came in the form of minimum commissions, the individual was engaged in covered employment. Id. at 260 A.2d 291. In this case, however, no compensation was actually paid (or "came") to the Claimant through the minimum commission arrangement. The fact that this compensation could have come is irrelevant. Although the point is arguable, the Board of Appeals concludes that the Peoples Life Insurance case is not authority for the proposition that theoretically payable minimum commissions operate to remove the exemption of 20(g) (8) (vii) where no compensation is actually paid under the minimum commission provision of the contract.

The Claimant's receipt of a car allowance of \$15 a week, however, is another issue. The Claimant did not have to account for this allowance. The Court of Appeals clearly ruled in the Peoples Life Insurance case that such an allowance removes the services from the exemption of § 20(g) (8) (vii) of the Act. Since the Claimant was receiving a \$15 per week car allowance in the second and third quarters of 1981, all of the claimant's earnings during that period were services in covered employment. The Claimant, therefore, is entitled to have his earnings in these quarters credited as covered employment within the meaning of § 20(g) and to have a benefit amount calculated based on that employment.

DECISION

The Claimant's services for the Monumental Life Insurance Company in the second and third quarters of 1981 were services in covered employment within the meaning of § 20(g) of the Law. The Local Office is instructed to calculate the Claimant's earnings from this employer during this period and establish a weekly benefit amount based on the earnings in these two quarters.

The decision of the Appeals Referee is reversed.

  
Chairman

  
Associate Member

K:D  
dp

DATE OF HEARING: December 7, 1982

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Christopher Miles

Thomas Bollinger



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

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

- DECISION -

CLAIMANT: Gilbert George Schmidt  
 DATE: Oct. 11, 1982  
 APPEAL NO.: 11533  
 S. S. NO.:  
 EMPLOYER: Monumental Life Insurance Co.  
 L. O. NO.: 40  
 APPELLANT: Claimant

ISSUE: Whether the claimant is monetarily eligible for unemployment insurance benefits within the meaning of Section 3(b) 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 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 26, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Gilbert George Schmidt - Claimant  
 Jean Schmidt - Wife

FOR THE EMPLOYER:

Christopher Miles - Reed,  
 Roberts Associates, Inc.

FINDINGS OF FACT

The claimant was employed by the Monumental Life Insurance Company of Baltimore, Maryland for thirty-one years. His last day of employment was July 1, 1982. The claimant retired at that time, when he was given the option of retiring or being terminated. The claimant receives a pension in the amount of \$225.00 per month until he is sixty-five years of age. At that time, the amount of the pension will be reduced because a portion of it is paid under an early retirement option. The claimant is now sixty-one years of age.

All of the claimant's compensation during his last years of employment was paid to him as a commission on the amount of Insurance sold and the amount of payments collected from a debit.

CONCLUSIONS OF LAW

Section 20(g) (XVII) provides that employment does not include service performed by an individual for a person as an insurance agent or as an insurance solicitor, if the individual performs all of the services for remunerations solely by way of commission. The claimant falls within this exception from unemployment. All of his remuneration was by way of commissions on the amount of insurance sold and the amount of premiums collected. Under these circumstances, he is not entitled to unemployment insurance because he does not have sufficient wages from covered employment within his base period to justify the payment of unemployment insurance benefits.

DECISION

The claimant has insufficient total wages during the base period and does not meet the eligibility requirements of Section 3(b) of the Maryland Unemployment Insurance Law. Benefits are denied from July 4, 1982 until the claimant is monetarily eligible.

The determination of the Claims Examiner is affirmed.

*Martin A Ferris*  
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Martin A. Ferris  
Appeals Referee

*[Signature]*  
*Ray Bleasling*

Date of hearing: 9/27/82  
amp/9485  
(Godsey)  
5357  
Copies mailed to:

Claimant  
Employer  
Unemployment insurance - Baltimore

Christopher Miles