



STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

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Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERNE LANIER
Appeals Counsel

DECISION NO.: 283-BH-83

DATE: March 11, 1983

APPEAL NO.: 11450

S. S. NO.:

CLAIMANT: Harold C. Cohen

EMPLOYER: Emergency Physician Associates, P.A.

L.O No.:

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 he was ineligible because he 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

April 10, 1983

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Harold C. Cohen - Present

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 in this case, as well as the Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed as a Coordinator of Life Support Program effective June 15, 1981, pursuant to a one-year employment contract. However, on February 25, 1982, in violation of the terms of the contract, the Claimant was discharged when his position was abolished.

Shortly thereafter, the Claimant instituted an action for breach of contract against the Employer in the District Court of Maryland for Montgomery County, Civil case No.4139-82. On June 28, 1982, a judgment absolute was entered in favor of the Claimant and against the Employer. The judgment awarded damages in the amount of \$4,500, plus \$10.00 costs. The damage award was equal to the exact amount of wages the Claimant would have earned from the Employer were it not for the breach of contract, Plus costs. The Employer tendered its check to the Claimant in the amount of \$4,510 in satisfaction of the judgment.

Following his discharge, the Claimant applied for and received unemployment insurance benefits for the weeks ending April 3, 1982, April 10, 1982, April 17, 1982, and April 24, 1982. The amount of benefits received by the Claimant totaled \$396.00.

Unemployment insurance benefits to the Claimant were discontinued when the Employer notified the Employment Security Administration of the Claimant's award of damages, and the Employment Security Administration notified the Claimant that he must repay the benefits that he had received in accordance with the provisions of §17(d) of the Unemployment Insurance Law.

CONCLUSIONS OF LAW

The issue is whether the receipt of damages in satisfaction of a judgment for breach of an employment contract constitutes "wages" within the meaning of Unemployment Insurance Law.

In Katsianos v. Maryland Employment Security Administration, 92 Md. App. 688, 402 A.2d 144 (1979), the Court of Special Appeals of Maryland held that the Employment Security Administration may recoup unemployment insurance benefits paid when a Claimant is later awarded "back pay" by the National Labor Relations Board (NLRB). The Court concluded that the award of "hack pay" constituted a retroactive award of wages within the terms of §17(d) of the Law. In reaching its conclusion that the award was "back pay", the Court considered the following:

1. The amount of the award was identical to the wages the Claimant would have received had she not been terminated;
2. The Claimant in the case referred to the award as "back pay";

3. The NLRB referred to the award as "back pay";
4. The employer, in payment of the award, deducted Federal and State withholding taxes and FICA taxes.

Although the award in the instant case was equal to the exact amount of wages the Claimant would have earned from the Employer were it not for his discharge, we conclude that it was not an award of "back pay" as the Court found in Katsianos. In Katsianos, the NLRB, an administrative agency with the authority to award "back pay", specifically designated its award as "back pay", and the Employer in that case treated the award as such by the withholding of payroll taxes. Here, the District Court of Maryland entered a judgment for the breach of an employment contract against the Employer who satisfied the judgment in full. Thus, it is of little significance that the District Court of Maryland may have used, as the measure of damages, the wages that the Claimant would have earned if he had not been discharged. Indeed, we note, a cause of action seeking "back pay" as such, is not a justiciable cause of action in Maryland's District Courts. C. J. P., §4-401-4-402.

Moreover, 620(n) of Maryland's Unemployment Insurance Law defines the term "Wages" to mean "all remuneration for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash." Section 20(1) of the law defines "unemployment" and provides, in relevant part, "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. . . ."

Thus, the Employer's satisfaction of the judgment of the District Court of Maryland did not constitute "wages" for it was not a "remuneration for personal services" within the meaning of §20(n). It was the satisfaction of a debt created by a court order as distinguished from a debt created by reason of a master-servant relationship. The fact that, in the past, there was a master-servant relationship between the judgment debtor and the judgment creditor is immaterial.

Further, we conclude, the Claimant was rendered "unemployed" within the meaning of 620(1) when his position was abolished for he performed no services thereafter with respect to which wages were payable to him.

DECISION

The Claimant's receipt of damages in satisfaction of a judgment for breach of an employment contract did not constitute a receipt of "wages" within the meaning of §20(n) of the Law.

The Claimant was "unemployed" within the meaning of §20(1) of the Law. Benefits are allowed from the week ending March 28, 1982.

There was no retroactive award of "wages" in this case therefore, section 17(d) does not apply.

The decision of the Appeals Referee is reversed.

D:wf
gm

DATE OF HEARING: February 22, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

S. Allan Adelman, Esquire
Lambert. Furlow, Adelman & Haldeman

John Zen - Legal Counsel

UNEMPLOYMENT INSURANCE - FREDERICK



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BOARD OF APPEALS
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 MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Harold C. Cohen
 EMPLOYER: Emergency Physician Associates P. A.
 ISSUE: Whether the claimant was unemployed within the meaning of Section 20(1) of the Law.

DATE: 11/22/82
 APPEAL NO.: 11450
 S. S. NO.:
 L.O. NO: 5
 APPELLANT: Claimant

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

Dec. 7, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Submitted Judicial Documents

FINDINGS OF FACT

The claimant was employed by Emergency Physician Associates P.A., for approximately seven and one-half months, his last job classification as a Coordinator of Life Support Program, at an annual salary of \$15,000. He last worked for this employer on or about February 25, 1982.

The claimant's separation from this employment occurred when his job was abolished. The claimant filed a suit to recover damages for his loss of wages on his complete contract prior to the duration of one year to end June 15, 1982. -

The District Court of Maryland for Montgomery County awarded damages in the amount of \$4,500 representing the amount of wages he would have received if he continued to work for this employer.

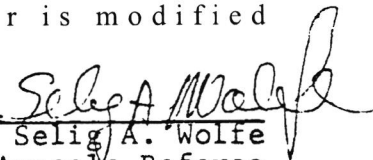
CONCLUSIONS OF LAW

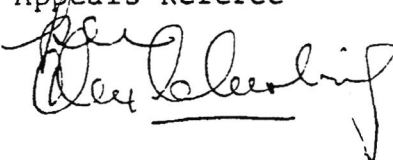
As the claimant received damages representing earnings he would have received, if he continued to work for his employer from February 25, 1982 to June 15, 1982, the claimant is considered unemployed within the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law for that period of time. The determination of the Claims Examiner shall be modified accordingly.

DECISION

The claimant does not meet the unemployed definition of Section 4 and 20(1) of the Maryland Unemployment Insurance Law. The claimant is disqualified from receiving unemployment insurance benefits from February 25, 1982 to and including June 15, 1982.

The determination of the Claims Examiner is modified accordingly.



Selig A. Wolfe
Appeals Referee


Date of Hearing: 10/19/82

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(5700)-?

Copies mailed to:

Claimant
Employer
Unemployment Insurance - Frederick, Towson