DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

THOMAS W KEECH
Chairman

HAZEL A WARNICK
MAURICE E DILL
Associate Members

SEVERN E LANIER
Appeals Counsel

-DECISION

DECISION NO.: 563-BH-8A

DATE: June 14, 1984

CLAIMANT Josephine Taylor

APPEAL NO.: 00481-EP

S.S.NO.:

EMPLOYER A. Samuel Kurland
ATTN: Beverly Glassband, Admin.

LO. NO.: 45

APPELLANT: EMPLOYER

ISSUE Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the Law; whether the claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; and whether the appealing party failed, without good cause, to file a timely and valid appeal within the meaning of §7(c)(ii) 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 July 14, 1984

-APPEARANCE-

FOR THE CLAIMANT

Josephine Taylor

FOR THE EMPLOYER

Brian Blitz,
Attorney;
Sam Kurland,
Owner

EVALUATION OF 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 in this case, as well as the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed from December of 1977 until July of 1983 at the employer's premises at 3915 W. Belvedere Avenue in Baltimore, Md. These premises consisted of a self-service coin operated laundry which was basically unattended except for three periods during the day when the claimant was required to be there. The claimant was paid $90.00 per week. Her duties consisted of opening the premises at 7:30 a.m., returning to the premises at approximately noon and working there until approximately 5:00 p.m., then returning back at 7:00 p.m. until approximately 9:00 or 9:30 p.m.

The landlord of the establishment on Belvedere Avenue informed the employer in June or July of 1983 that the employer's lease would expire and that it would not be renewed after July 31, 1983. The claimant was notified that she was laid off as of that date. She was also notified, however, that the employer had another establishment on Liberty Road and that she could apply for a similar position at this establishment. The claimant spoke to the owner's secretary about the Liberty Road location, but was told that there was no public transportation to the site. In fact , there was public transportation to the site, but it would require the claimant to take two buses.

The claimant did not apply for the new position but instead applied for unemployment insurance. When the claimant applied for unemployment insurance, she informed the agency that the premises at 3915 W. Belvedere Avenue had closed down permanently. Despite this fact, the agency's Notice of Benefit Determination was sent to that address. The employer's official mailing address with the agency, however, has always been 1803 Pennsylvania Avenue, Baltimore, Md. 21217. The employer first received notice that the claimant had filed for benefits when it received a notice of quarterly charges sent to its Pennsylvania Avenue address. Relatively soon after receiving this, the employer filed an appeal of the Benefit Determination.

CONCLUSIONS OF LAW

The employer's evidence concerning the exact date when it first became aware of the claimant's claim for benefits was somewhat vague, but, considering all the circumstances, the Board concludes that the employer did file a timely appeal. Not only was the agency technically on notice of the employer's address at Pennsylvania Avenue, but it also had actual knowledge that the premises on Belvedere Avenue were a self-service laundromat and also that the laundromat had closed down on July 31, 1983, approximately 24 days prior to the date the Benefit Determination was sent to that address. Under all of these circumstances,

the agency has not proven that its determination was mailed to the last known address of the employer. Since there is no showing that the document was mailed to the last known address of the employer, the Board will accept the employer's evidence that the appeal was timely filed.

Turning to the merits of the case, the Board concludes that the claimant was unemployed because she was laid off on July 31, 1983 when her employer lost his lease on the establishment at which he was working. This is not a case in which the claimant has refused a transfer, see, e.g., Kramp vs. Baltimore Gas and Electric Company (1051-BR-82) . 'This claimant was not transferred; she was clearly laid off, then offered another position.

The other position offered the claimant was not suitable work within the meaning of §6(d) of the law. The claimant was informed by the employer's agent that there was no transportation to the proposed job site. Even if the claimant had known that there was public transportation, however, the facts of her employment show that this still would not be suitable work. The claimant was required to visit the premises on three separate occasions during the day. Considering the fact that the claimant would have had to take two buses each way to the Liberty Road establishment , these facts show that the claimant would have had to take 12 buses per day in order to meet her employment requirements at Liberty Road. In addition, it appears that the job paid well below the minimum wage. The employer's testimony concerning the claimant's salary was uncharacteristically vague, and the Board credits the claimant's testimony in regard to her hours and salary.

For all of the above reasons , the Board concludes that the claimant did not voluntarily quit her job within the meaning of §6(a) of the law, nor did she refuse suitable work within the meaning of §6(d) of the law.

DECISION

The employer filed a timely appeal of the Benefit Determination within the meaning of §7(c)(ii) of the law.

The claimant did not voluntarily quit her job within the meaning of §6(a) of the law. No disqualification is imposed under that section of the law.

The claimant did not refuse suitable work within the meaninq of §6(d) of the law. No disqualification is imposed based on that section of the law.

The decision of the Appeals Referee is modified.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:W
kbm

CONCURRING OPINION

The claimant was last employed at a coin operated laundry of the employer located at 3915 W. Belvedere Avenue in Baltimore City. She became unemployed because she was laid off at the expiration of the employer's lease of the premises. When the claimant applied for unemployment insurance, she gave the Belvedere Avenue address as the address of her employer. The Department of Employment and Training determined that the claimant was entitled to benefits and on August 24, 1983, mailed notice of its benefit determination to the employer at the Belvedere Avenue address. Although the employer was informed of the claimant's application for benefits by telephone on August 24, 1983, the employer took no action until January 9, 1984, when it forwarded to the department its letter of appeal. The employer operates several laundries in the Baltimore area.

Actually, the employer received most of its mail at 1803 Pennsylvania Avenue in Baltimore City. It also received mail at Belvedere Avenue, but infrequently. It contends that the department's mailing of notice to the Belvedere Avenue address where its lease had expired was not in compliance with the act because that address was not its "last known address" within the meaning of §7(c) (ii) of the law. The Appeals Referee held that the employer's appeal was untimely without good cause. I agree.

Section 7(c)(ii) of the law provides:

> A determination shall be deemed final unless a party entitled to notice thereof files an appeal within 15 days after the notice was mailed to his last known address, or otherwise delivered to him; provided, that such period may be extended by the Board of Appeals for good cause.
>
> [Emphasis Added]

In Kresge Co. v. Unemployment Compensation Board of Review, 159 Pa. Super. 549,49 A.2d 281 (1946), the Pennsylvania Department of Labor and Industry determined that a claimant was entitled to unemployment insurance and mailed notice of its determination to the employer at its store in Reading, Pennsylvania, where the claimant had been employed and from where her claim for compensation arose. Under Pennsylvania law, appeals from such determinations were required to have been filed within 10 days of mailing notice to the employer's "last known post office address" . The employer filed its appeal 14 days after notice was mailed and alleged that its proper post office address was its home office in Detroit, Michigan and that the department's mailing of notice to the employer's store in Reading, Pennsylvania was not in compliance with the law. The Superior Court of Pennsylvania held that mailing of notice to the Reading store of the employer, where the claimant was employed, and out of which employment the claim for unemployment compensation arose, was mailing of notice to the "last known post office address" of the employer within the meaning of the statute. The Court stated that the question of the most convenient manner for the employer to receive notice was one of internal management with which it was not concerned. The Court went on and stated that the problem presented was one of statutory interpretation, and that it was not one of determining what the practice of the parties was, or should have been. The Court concluded that the employer's appeal was not taken in time and dismissed it.

Here, the department mailed notice of this determination to the employer' s laundry at Belvedere Avenue, where the claimant was last employed and out of which employment her claim for compensation arose. I conclude that the department mailed notice to the "last known address" for the employer within the meaning of §7(c) (ii) , and the question of where the employer actually received most of its mail for its convenience, and the fact of the expiration of its lease, were questions of internal management with which §7(c) (ii) of the law is not concerned.

For these reasons, the appeal from the department's original determination was not taken in time and should be dismissed for want of good cause. I agree that the claimant is entitled to benefits.

Maurice E. Hill
Associate Member

D
kbm
Date of Hearing: May 29, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Brian A. Blitz, Esq.
The Maryland National Bank Bldg.

John Roberts - Legal Counsel

UNEMPLOYMENT INSURANCE - PIMLICO

STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTLEMAN
Secretary

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

BOARD OF APPEALS
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SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Administrative
Hearings Examiner

- DECISION -

DATE: 3/2/84

CLAIMANT: Josephine Taylor

APPEAL NO.: 00481-EP

S.S.NO.:

EMPLOYER: Belvedere Coin-Op Laundry

LO. NO.: 45(1)

APPELLANT: Employer

ISSUE: Whether the claimant is subject to a disqualification of benefits within the meaning of Section 6(c) of the Law.

Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c) (ii) 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, ROOMS 15, 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 March 19, 1983

- APPEARANCE -

FOR THE CLAIMANT:
Claimant-Present

FOR THE EMPLOYER:
A. Samuel Kurland,
Owner

FINDINGS OF FACT

The claimant was granted benefits by the Claims Examiner on the grounds that the Claims Examiner found no misconduct connected with her work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law, which would deny the claimant benefits. Notification of this disqualification was mailed to the claimant and the employer at their address of record on August 24, 1983. This Notice informed the claimant that he had until September 8, 19.83, within which to file an appeal. The employer signified the intention of filing an appeal by a letter dated January. 9, 1984.

There was no error on the part of the Department of Employment and Training in the matter of proper notice to the claimant of the disqualification in question.

There appeared no satisfactory reason for the employer to file a late appeal.

CONCLUSIONS OF LAW

The Maryland Unemployment Insurance Law Section 7(c) (ii) of provides that:

> "A determination shall be deemed final unless a party entitled to notice thereof files an appeal within 15 days after the notice was mailed to his last known address, or otherwise delivered to him; provided, that such period may be extended by the Board of Appeals for good cause."

There appearing no valid reason for the employer to file a late appeal, the Appeals Referee finds that the employer filed a late appeal.

DECISION

The appealing party filed an untimely appeal within the meaning of Section 7(c) (ii) of the Maryland Unemployment Insurance Law.

The determination of the Claim Examiner allowing benefits to the claimant for a non-disqualifying reason within the meaning of Section 6(c) of the Law, is affirmed.

John G. Hennegan
Appeals Referee

Date of hearing: 2/1/84
rc
(567)-Hampton
Copies mailed to:

Claimant
Employer
Unemployment Insurance - Pimlico

A. Samuel Kurland
Attn: Beverly Glassband, Admin. Asst.
T/A Speedway Launderette