- *DECISION* -

Claimant:
OMWATTIE DEODAT

Employer:
JUST A BUCK INC

Decision No.: 02315-BH-98

Date: July 28, 1998

Appeal No.: 9714585

S.S. No.:

L.O. No.: 23

Appellant: Employer

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- 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: August 27, 1998

- APPEARANCES -

FOR THE CLAIMANT:
Claimant not present

FOR THE EMPLOYER:
Andrew Sprainis, Owner

For the Agency:
John T. McGucken,Legal Counsel
Susan Bass, Agency

EVALUATION OF THE EVIDENCE

A threshold issue in the instant case is the question of whether a part-time employer has the right to a hearing within the meaning of Maryland Labor and Employment Article Section 8-1001(a)(2). The Agency averred that in situations defined in and pursuant to Section 8-1001(a)(2) the aggrieved part-time employer is provided no right to a hearing; therefore, there is no remedy available at law for resulting charges to his account. The question raised by the Agency is one of statutory interpretation and construction.

Maryland Labor and Employment Article Section 8-1001(a)(2) (hereafter "Subsection (a)(2)") states that "A claimant who is otherwise eligible for benefits from the loss of full-time employment may not be disqualified from the benefits attributable to the full-time employment because the claimant voluntarily quit a part-time employment, if the claimant quit the part-time employment before the loss of the full-time employment."

The Agency proffered that it was the intent of the legislature when adopting Subsection (a)(2) for previous base-period part-time employers to be afforded **no** forum to challenge a charge to their account if a claimant subsequently became separated for non-disqualifying reasons from their full-time employer. The Agency's legislative liaison, Susan Bass, testified that she attended several meetings and hearings on the bill proposing Subsection (a)(2), and it was her impression that the members of the legislature were aware that this subsection afforded part-time employers no remedy at law for charges to their accounts and furthermore, that this was a policy decision adopted by the legislature.

The Board finds the Agency's argument in this regard unpersuasive. The "intent of the legislature" is a collective intent, not merely the intent of several members' statements made at hearings and meetings. The agency offered no committee reports or floor reports in support of its claims of legislative intent pertaining to Subsection (a)(2). The Board does not find a witness' impression on what she believes the intent of the legislature was in regard to Subsection (a)(2), by itself, sufficient to support a finding that precluding part-time employers from the right to a hearing was **in fact** the clear intent of the collective legislature when adopting this law.

To determine the intent of the legislature, the Board examined the wording and statutory construction of Subsection (a)(2) by itself and within the context of Section 8-1001 and the entire Maryland unemployment insurance statute.

Throughout the Maryland unemployment insurance statute, parties who are adversely affected by an Agency determinations have the right to protect and defend their interests; they have the right to a hearing and a decision on the merits. If the legislature intends that part-time employers are to be without a remedy under Subsection (a)(2), the legislature will need to clearly specify such an intent in the text of the statute; otherwise, the Board will not find legislative intent where it is not clear.

The Agency's position assumes that a decision in favor of the part-time employer would disqualify the claimant from her rightful benefits and ignore and undermine the requirements of Subsection (a)(2). A literal reading of Subsection (a)(2) would not preclude the imposition of a penalty against the claimant for a decision in the part-time base-period employer's favor. The intent of the legislature must have been for such a penalty **not** to be imposed, otherwise the very purpose of Subsection (a)(2) would be nullified. The Board presumes that the legislature intended to pass Subsection (a)(2) on solid Constitutional grounds. The Agency's position that the legislature intended for part-time base-period employers not to have a remedy at law for charges to their tax account under Subsection (a)(2) raises serious questions regarding violations of employers' Constitutional due process guarantees.

Therefore, Board finds that pursuant to Subsection (a)(2) a claimant may not be disqualified from benefits as it pertains to her full-time employment, even in the light of an adverse decision in regard to her previous part-time employment; the plain language of the statute clearly expresses the intent of the legislature in this regard. However, the former base-period part-time employer has the right to protect and defend his earned tax rating by asserting that a claimant was discharged from his employ for reasons which would otherwise be disqualifying in a hearing on the merits. A decision resulting in favor of the part-time base-period employer would result in the claimant's benefits being not chargeable to its account and the "penalty" period normally imposed on claimants for actions which would otherwise be disqualifying be "waived". This functional interpretation of Subsection (a)(2) accomplishes the intent of the legislature in guaranteeing unemployment insurance benefit payments to former part-time employees who subsequently become separated from full-time employment **and** preserves the base-period part-time employers' Constitutional due process rights in the protection and defense of their earned tax rating with a hearing on the merits.

A second threshold issue was the question of whether the employer had good cause for filing a late appeal. Due to misinformation given to the employer by the Agency with regard to procedure and the effect of benefit charges against its tax account and the rights of appeal, and in light of the unique question of law (as described above) which contributed to misinformation given to the employer on his right to a hearing, the Board finds good cause for the employer in filing a late appeal.

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 Labor, Licensing and Regulation's documents in the appeal file.

The Board notes that the claimant, duly notified of the date, time and place of the hearing, failed to appear.

FINDINGS OF FACT

The claimant was employed as a part-time cashier from February 24, 1994, through May 23, 1997. She is unemployed as the result of a voluntary quit.

Prior to her leaving employment, the claimant moved. The claimant informed the employer that she was quitting because she did not have transportation to commute to her job from her new residence. The employer offered her continued part-time employment at any one of his various stores' locations. The claimant refused these offers.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-806(e) (1991)provides that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. Appeals filed after that date, either in person or by mail, shall be deemed late and the benefit determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.06.01B provides that an appeal is considered filed on the date (1) that it is delivered in person to any local employment office, or (2) on which it is postmarked by the U.S. Postal Service. COMAR 09.32.06.01B(3) provides that "The period for filing an appeal from the claims examiner's determination may be extended by the hearing examiner for good cause shown." Good cause means "due diligence" in filing the appeal. Francois v. Alberti Van & Storage, 285 Md. 663, 404 A.2d 1058 (1979) and Matthew Bender and Co. v. Comptroller of the Treasury, 67 Md. App. 693, 509 A.2d 702 (1986).

The Board finds that the employer filed a late appeal, but for good cause within the meaning of Section 8-806.

Section 8-1001 of the Labor and Employment Article provides that an individual shall be disqualified from the receipt of benefits where their unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. A circumstance for voluntarily leaving work is valid if it is a substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit or of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment.

The Board finds that, based on a preponderance of the evidence, the claimant quit her job for reasons which do not constitute good cause or valid circumstances within the meaning of Section 8-1001.

The employer in the instant case shall not be charged with benefits paid to the claimant attributable to her separation from full-time employment.

In addition, there is no disqualification of benefits payable to the claimant as a result of this decision pursuant to the requirements of Section 8-1001(a)(2).

DECISION

The appellant file a valid and timely appeal within the meaning and intent of the Maryland Code, Labor and Employment Article, Title 8, Section 806(e)(f)(2).

IT IS HELD THAT the unemployment of the claimant was due to leaving work voluntarily, without good cause or valid circumstances, within the meaning of Section 8-1001 of the Labor and Employment Article. The employer shall not be charged with benefits paid to the claimant. There is no penalty imposed on the claimant as a result of this decision pursuant to Section 8-1001(a)(2).

The decision of the Hearing Examiner is reversed.

Clayton A. Mitchell, Sr., Associate Member

Donna Watts-Lamont, Associate Member

Hazel A. Warnick, Chairperson

kjk
Date of hearing: November 12, 1997
Copies mailed to:
OMWATTIE DEODAT
JUST A BUCK INC
JUST A BUCK INC
Local Office - #23

UNEMPLOYMENT INSURANCE APPEALS DECISION

OMWATTIE DEODAT

SSN

Claimant

vs.

JUST A BUCK INC

Employer/Agency

Before the:

Maryland Department of Labor, Licensing and Regulation
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9714585
Appellant: Employer
Local Office: 23 / Columbia

September 2, 1997

For the Claimant:PRESENT

For the Employer:PRESENT, ANDY SPRAINIS

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated, Labor and Employment Article, Title 8, Sections 1001 (Voluntary Quit for good cause), 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), or 1003 (Misconduct connected with the work). Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

FINDINGS OF FACT

The local office mailed copies of a benefit determination to the parties in this case. The determination had an appeal deadline of July 1, 1997. In this case, the employer noted its appeal on July 24, 1997. The employer offered no substantial reason, nor did the employer offer any substantial documentation, to support its reason why it filed its appeal so late. The reasons offered by the employer therefore do not rise to the level necessary to show good cause.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-806(e) (1991) provides that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. Appeals filed after that date, either in person or by mail, shall be deemed late and the benefit determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.06.01B provides that an appeal is considered filed on the date (1) that it is delivered in person to any local employment office, or (2) on which it is postmarked by the U.S. Postal Service. COMAR 09.32.06.01B(3) provides that "The period for filing an appeal from the claims examiner's determination may be extended by the hearing examiner for good cause shown." Good cause means "due diligence" in filing the appeal. Francois v. Alberti Van & Storage, 285 Md. 663, 404 A.2d 1058 (1979) and Matthew Bender and Co. v. Comptroller of the Treasury, 67 Md. App. 693, 509 A.2d 702 (1986).

In the instant case, the employer filed a late appeal for reasons which do not constitute good cause under Section 8-806.

DECISION

IT IS HELD THAT the employer did not file a timely appeal within the meaning and intent of Md. Code Ann., Labor & Emp., Section 8-806(e) (1991).

The determination of the claims examiner, and any disqualification applied, remains the same.

D. Sandhaus, ESQ
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by September 17, 1997.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: August 25, 1997
CH/Specialist ID: 23881
Seq. No.: 002
Copies mailed on September 2, 1997 to:

OMWATTIE DEODAT
JUST A BUCK INC
LOCAL OFFICE #23