



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

**BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201**

**383-5032**

**THOMAS W. KEECH  
Chairman**

**HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members**

**SEVERN E. LANIER  
Appeals Counsel**

**STATE OF MARYLAND  
HARRY HUGHES  
Governor**

**-DECISION-**

	DECISION NO.:	166-BH-84
	DATE:	February 17, 1984
CLAIMANT: Frank Tracey	APPEAL NO.:	08686
	S. S. NO.:	
EMPLOYER: SCM, Chemicals	L.O. NO.:	40
	APPELLANT:	CLAIMANT & AGENCY
ISSUE:	Whether the Claimant was unemployed within the meaning of § 20(1) 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, THE OR CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT March 18, 1984

**-APPEARANCE-**

FOR THE CLAIMANT:

Frank Tracey - Claimant

FOR THE EMPLOYER:

Not Represented

DEPARTMENT OF EMPLOYMENT AND TRAINING  
John Roberts - Legal Counsel

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

#### FINDINGS OF FACT

The Claimant was disqualified under § 6(b) of the Law effective May 1, 1982. That disqualification, eventually affirmed by the Board, imposed on the Claimant a penalty that he would be paid no unemployment until he became re-employed, earned \$1,440.00 and thereafter became unemployed through no fault of his own.

The Claimant pursued his remedies against the company and was eventually reinstated with back pay. Back pay was awarded on January 1, 1984 in the amount of \$9,781.28. The Claimant was put back on the employer's rolls on January 3, 1983. On January 3, 1983, however, the employer was in a layoff status. The Claimant filed three claims for unemployment insurance until about January 23, 1983, when he actually went back to work.

The claims issued in this case are the three filed in January of 1983 and, more importantly, various claims filed by the Claimant during the period between the time he was discharged and the time he was reinstated. The Claimant did not receive back pay for each and every week between May 1, 1982, and January 3, 1983. The reason for this was that the company had been in two periods of layoff during this time. The back pay award did not cover the period during which the Claimant would have been laid off. These periods were from June 21, 1982, until July 18, 1982 and November 29, 1982, until January 23, 1983.

The question in this case is whether the Claimant earned \$1,440.00 within the meaning of § 6(b) and, if he did earn it, when did he earn it.

#### CONCLUSIONS OF LAW

The agency's position is that the Claimant earned all of this money on January 1, 1983, when he was given back pay of \$9,781.28. Having earned this amount of money on January 1, the Claimant thus would be eligible for the three weeks of layoff following his reinstatement but would not be eligible for the weeks of layoff in June and July and November and December of 1982.

The Claimant's position is that the penalty imposed under § 6(b) of the Law effective May 1, 1982 should be ignored since it was nullified by his reinstatement and award of back pay for that period.

The Board concludes that the 6(b) penalty was final and was not affected by any decision of the company to reinstate the Claimant. The decision as to the reason for discharge under the Maryland Unemployment Insurance Law is a different decision as to whether the Claimant should be reinstated, and the Board has ruled in the past that a later reinstatement is irrelevant to the imposition of a penalty under the unemployment insurance law.

The Board concludes, however, that the Claimant's back pay award should be attributed to the time when it would have been earned for the purposes of determining whether the 6(b) penalty has been served. Since the Claimant's gross pay was \$380.00 per week, approximately \$2,660.00 of the Claimant's back pay award was attributable to the weeks between May 1, 1982, and June 21, 1982. The Board concludes, therefore, that by June 21, 1982, the Claimant had earned well above the \$1,440.00 required of him in order for him to meet the requirements imposed by the penalty under § 6(b) of the Law. As it is conceded that the entire premises was in layoff status as of June 21, 1982, the Claimant is eligible for benefits for any properly filed claims after June 21, 1982. The Claimant, of course, must have met all of the eligibility requirements of the law.

Under § 17(d) of the law, the Claimant is, of course, not eligible for benefits during those particular weeks for which he did receive back pay.

#### DECISION

The penalty imposed on the Claimant under § 6(b) of the Law expired as of June 21, 1982. The Claimant is eligible for benefits based on any properly filed claims filed during the period between June 21, 1982 and July 18, 1982 and between November 29, 1982 and January 23, 1983, providing that the Claimant met the other eligibility requirements of the law.

Under § 17(d) of the law, the Claimant is not eligible for benefits from May 1, 1982 until June 21, 1982 and from July 18, 1982 and November 29, 1982.

The decision of the Appeals Referee is affirmed.

*Thomas W. Keech*

Chairman

*Loyal A. Wambler*

Associate Member

*Maurice E. Bill*

Associate Member

K:D:W

dp

DATE OF HEARING: December 6, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John Roberts - Legal Counsel

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
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BOARD OF APPEALS  
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 Appeals Counsel  
 MARK R. WOLF  
 Administrative  
 Hearings Examiner

STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

- DECISION -

CLAIMANT: Frank Tracey  
 DATE: 9/2/83  
 APPEAL NO.: 08686  
 S. S. NO.:  
 EMPLOYER: SCM Chemicals  
 L. O. NO.: 40  
 APPELLANT: Claimant  
 ISSUE: Whether the claimant was unemployed within the meaning of Section 20(1) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON Sept. 19, 1983

- APPEARANCE -

FOR THE CLAIMANT: Claimant-Present  
 FOR THE EMPLOYER: Submitted Information

FINDINGS OF FACT

The claimant was employed by SCM Chemicals for seven years as a "B" Operator, earning \$9.50 per hour until he was discharged on May 1, 1982.

Upon discharge, the claimant applied for unemployment insurance benefits. The Claims Examiner found that the claimant's separation came about as a result of gross misconduct. A disqualification of ten times the claimant's weekly benefit amount or \$1,440 was imposed, requiring the claimant to earn this amount before he would again be entitled to benefits. The

claimant appealed the Claims Examiner's determination to the Appeals Division and the Board of Appeals. Both divisions affirmed the Claims Examiner. However, in the interim, the claimant had filed a grievance. The arbitration was found in favor of the claimant. The claimant was entitled to all of his back pay. However, during the claimant's separation from his work, the employer had two layoffs, one from June 21, 1982 through July 18, 1982, a period of four weeks and one from November 29, 1982 to January 23, 1983. This was a period of eight weeks. The claimant's award was for \$9,781.28. The claimant returned to work with this employer on January 3, 1983, while they were still on layoff status.

As of the time of the hearing, the claimant was unemployed.

#### CONCLUSIONS OF LAW

Had the claimant had the maximum disqualification under gross misconduct for the period he was separated from his employment and reinstated with full back pay, and the claimant had received his unemployment insurance benefits, he would have had an overpayment for this amount. But the claimant received no unemployment insurance benefits since he was under a maximum disqualification within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. During the period from June 21 1982 to July 18, 1982, the claimant would have received unemployment insurance benefits because he was unemployed. This would also apply between the period of November 29, 1982 and January 23, 1983, when the claimant returned to work. The claimant having received full pay for the weeks that he was separated by the award would be entitled to unemployment insurance benefit when the award reached \$1,440, as calculated by the weeks of separation and not layoff. It would only include the time that there was a layoff after the claimant had reached an award per week of \$1,440, when the claimant's disqualification under Section 6(a) had been lifted. Therefore, the claimant was unemployed during the period that the employer had laid off and the claimant had already in his award reached the amount of \$1,440. Therefore, the determination of the Claims Examiner will be reversed.

#### DECISION

The claimant was unemployed during the period that his award reached \$1,440 and the claimant would have been in a lay off status. The claimant was not unemployed, within the meaning of

Section 20(1) of the Maryland Unemployment Insurance for those weeks in which the claimant's award applied.

The determination of the Claims Examiner is modified.

  
John G. Hennegan  
Appeals Referee

Date of Hearing: 8/23/83

rc

(5961)-Williams

Copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint