

-DECISION-

Claimant:
LEV FOOKSMAN

Decision No.: 3398-BH-02

Date: December 23, 2002

Appeal No.: 0220055

Employer:

S.S. No.:

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant failed to file proper claims for benefits within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 901.

- 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: January 22, 2003

- APPEARANCES -

FOR THE CLAIMANT:
Present
Boris Fooksman
Vadim Mzhen, Esq.

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. 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 Agency, duly notified of the date, time, and place of the hearing, failed to appear to present any evidence or testimony regarding the issue in this case. The Board finds the claimant's testimony and evidence to be unrefuted and credible.

The Board is persuaded that the claimant's reasons for not filing a proper claim were due to an Agency error. The claimant can speak English, but not fluently. The Board notes that there is a "help" option for persons who speak Spanish and English, but no option for persons like the claimant who speak another language (in this case Russian). The Board is persuaded that the claimant substantially complied with all instructions under the heading "FILING YOUR TELECERT". See *Claimant's Exhibit B-1*. The Board is also persuaded that the reasonable person in the claimant's position would not realize that "PROCESSING NUMBER" was a mandatory step in the telecert filing procedure. It would make sense that if the processing number was a mandatory step in the telecert procedure, it should have been indicated as step "5". The processing number is for internal administrative reasons only, and its information has nothing to do with the claimant's eligibility for benefits as steps 1 through 4 in the telecert filing procedure.

The claimant pursued his claim with due diligence. The claimant attempted to contact the Agency to resolve this technical error. At one point in time, the claimant was left on "hold" for two hours before he was able to speak with a supervisor who could answer his questions regarding his claim for benefits.

Electronic claim systems should be extremely easy to operate. The directions for operation should anticipate claimant's similarly situated to the claimant in the instant case. The directions for filing telecerts must be clear and concise. In the instant case, it is not at all clear that the "PROCESSING NUMBER" procedure was in actuality, step number 5 in the telecert filing procedure. Technical agency-related processing needs cannot be used as a shield to bar claimants from benefits to which they are otherwise entitled, and cannot deny due process.

FINDINGS OF FACT

The Board adopts the findings of fact of the hearing examiner. The Board also finds that the claimant pursued his claim for benefits with due diligence. The Board finds that the instructions for filing telecerts are inadequate in light of the facts of this case. There is no apparent avenue for claimant's to have questions answered in a timely manner when mistakes in filing for benefits are made. The Board finds that the claimant's reasons for filing re-opened and backdated claims are for good cause due to Agency error regarding its instructions.

CONCLUSIONS OF LAW


Md. Code Ann., Labor & Emp. Article, Section 8-901 (Supp. 1996) provides that an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the individual meets the requirements of the subtitle,

The evaluation of the evidence and findings of fact are incorporated herein by reference. The Board finds that based upon a preponderance of the credible evidence in the record, the claimant has good cause for filing a re-opened and backdated claim for the week beginning June 2, 2002 through the week ending July 6, 2002.

DECISION

The claimant filed valid and proper claims within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 901 and COMAR 09.32.02.04. Benefits are allowed for the week beginning June 2, 2002.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Date of hearing: December 10, 2002

Copies mailed to:

LEV FOOKSMAN

VADIM A. MZHEN, ESQ.

MARIA MAZZONI

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

LEV FOOKSMAN

SSN #

Claimant

vs.

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 0220055

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

September 06, 2002

For the Claimant : PRESENT

For the Employer :

For the Agency:

ISSUE(S)

Whether the claimant has filed proper claims for Unemployment Insurance benefits within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 901.

FINDINGS OF FACT

On June 15, 2002, the claimant attempted to file a telecert for the weeks ending June 8 and June 15. The claimant thought that he completed the telecert completely. When he did not receive a check for the weeks ending June 15, 2002, he believed that it was late. The claimant attempted to file a telecert on June 29, 2002 for the previous two weeks but the telecert system would not accept it. The claimant then called and spoke to a Claims Specialist who told him that his telecert did not go through because he did not wait for the confirmation number at the end of the call. The claimant's native language is Russian and he has some limitations on his English language skills.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-901 (Supp. 1996) provides that an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the individual meets the requirements of the subtitle.

COMAR 09.32.02.03C states that the effective date of an initial or reopened claim is the first day of the week in which an individual reports, registers, and files the initial or reopened claim at a local office. A claim cannot be backdated unless it falls within one of the exceptions listed in COMAR 09.32.02.03D.

COMAR 09.32.02.03D states that the effective date of an initial or reopened claim may be other than as provided in section C of this regulation in the following situations:

- (1) A claim shall be effective with the beginning of the week which includes the last day of work if the:
 - (a) claimant's reporting day is within 24 hours following the last day of work, and
 - (b) the initial or reopened claim was filed on the appropriate reporting day in the immediately succeeding week;
- (2) A claim may be backdated when a claimant reports partial earnings for week before the initial claim, to the Sunday of that week provided the claim is filed not later than:
 - (a) 30 days immediately following the close of that week, or
 - (b) 2 weeks after the date the partial wages are paid;
- (3) A transitional claim shall be effective the date following the end of the preceding benefit year;
- (4) Severe weather conditions exist, as declared by the Secretary;
- (5) Clerical error attributable to the Department occurs;
- (6) A local office is closed for a reason other than that the date is not a working day;
- (7) A claim may be backdated when the claimant did not file a claim in reasonable reliance on an invalid agreement to waive, release, or commute the claimant's rights to benefits as prohibited by the Unemployment Insurance Law.

EVALUATION OF EVIDENCE

In this case, the claimant failed to file an untimely claim for a reason that does not fall within one of the exceptions for backdating claims. Therefore, the claimant failed to file a timely and proper claim within the meaning of the Maryland Code Title 8 Section 901.

DECISION

It is held that the claimant filed untimely claims for the week beginning June 2, 2002 and through July 6, 2002 within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 (Supp. 1996) and COMAR 09.32.02.04B(4). Benefits are denied for that period.

The determination of the Claim Specialist is affirmed.

S Moreland, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Notice of Right to Petition for Review

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by September 23, 2002. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787

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

Date of hearing : August 23,2002
DLM/Specialist ID: WHG38
Seq No: 001
Copies mailed on September 06, 2002 to:
LEV FOOKSMAN
LOCAL OFFICE #63