



William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

- DECISION -

Claimant:
PAUL D. MCLEWEE

Decision No.: 01840-BR-94

Date: May 25, 1994

Appeal No.: 9406500

Employer:
NATIONAL CTR ON INSTITUTIONS &
ALTERNATIVES INC

S.S. No.:

L.O. No.: 40

Appellant: Board Assumed Jurisdiction

Issue: Whether the claimant filed a timely or appeal or had good cause for an appeal filed late, within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 806; whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 1003.

- 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: June 24, 1994

REVIEW ON THE RECORD

Upon review of the record in this case, including agency computer records, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board finds that the claimant had good cause to file a late appeal, within the meaning of LE, §8-806. The claimant filed his original claim with a benefit year beginning November 14, 1993. A nonmonetary determination was issued based on the claimant's separation from his last employer. The claimant was found to have been discharged for misconduct from this employer and was penalized from October 31, 1993 until January 8, 1994. The claimant did not appeal this decision and stopped filing claims after December 4, 1993.

On or about December 10, 1993, the claimant moved to a new address. However, since he was no longer filing claims, he did not see the need to notify the agency of his change of address. Unbeknownst to the claimant, however, a new non monetary determination was issued on December 14, 1993, concerning the claimant's separation from a previous employer, National Center on Institutions & Alternative, Inc., who also apparently was an employer in the claimant's benefit year.

The claimant did not receive notification of this determination because he had moved. He did not notify the agency of his change of address because, as far as he knew, his claim was closed and therefore, there was no reason for him to keep the agency informed of this address. It was only when he reapplied for benefits in March, 1994, that he learned of this second determination and immediately filed an appeal.

The Board finds that under these circumstances, the claimant had good cause to file a late appeal.

With regard to the merits, the Board finds that the claimant was employed by the National Center on Institutions & Alternatives, Inc. on a temporary on-call basis and at the time of his separation, had not been called to work for ten days. In addition, the claimant was supposed to become a permanent employee at a much higher salary, but for some unknown reason, that never happened.

The employer's own witness admitted that there was confusion concerning the claimant's status as a permanent employee and acknowledged that he was only temporary.

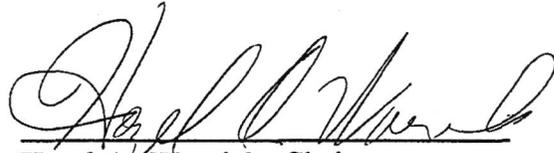
The Board concludes that the claimant did not quit his job, within the meaning of LE, §8-1001. He was discharged due to a lack of work. This is a discharge, but not for any misconduct. Therefore, the decision of the Hearing Examiner is reversed.

DECISION

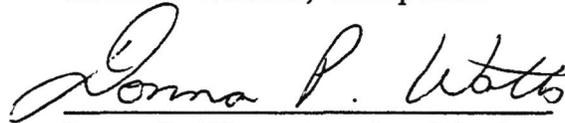
The claimant had good cause for filing a late appeal within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 806.

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 8-1002 or 1003 of the Labor and Employment Article. No disqualification is imposed under this section of the law.

The decision of the Hearing Examiner is reversed.



Hazel A. Warnick, Chairperson



Donna P. Watts, Associate Member

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Copies mailed to:

PAUL D. MCLEWEE
NATIONAL CTR ON INSTITUTIONS &
NATIONAL CTR ON INSTITUTIONS &
Local Office - #40

UNEMPLOYMENT INSURANCE APPEALS DECISION

PAUL D. MCLEWEE

Before the:

SSN #

Claimant

Vs.

NATIONAL CTR ON INSTITUTIONS &
ALTERNATIVES INC

Employer/Agency

**Maryland Department of Economic and
Employment Development
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 333-5040

Appeal Number: 9406500
Appellant: Claimant
Local Office: 40 / Eastpoint

May 17, 1994

For the Claimant: PRESENT

For the Employer: AMELIA CROCKRELL, ACCOUNTANT, GABRIELLE ALLEN, ADP

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).

FINDINGS OF FACT

A benefit determination mailed to the parties provided that the last day to file a timely appeal was December 29, 1993.

In this case, the appeal was filed in person on March 30, 1994.

The Appellant offers as a reason for late appeal that he moved on December 10, 1993, and that the mail was not forwarded so he was never advised of the decision which denied him benefits. The claimant had original] y opened his claim for employment benefits in November 1993, at which time he gave the local office his address of record. The claimant did not notify the local office that he had changed his address until March 30. 1994.

CONCLUSIONS OF LAW

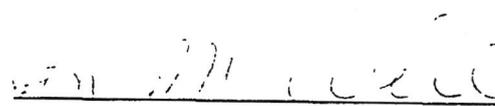
In Premick v. Roper Eastern, (141-BR-93), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to the Maryland Code, Labor and Employment Article, Title 8, Section 806(e)(f)2 to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant file a late appeal for reasons which do not constitute good cause under the provisions of the Maryland Code, Labor and Employment Article, Title 8, Section 806(e) (f)(2) and legal precedent construing that Section.

A claimant has the obligation to keep the local office notified of his current mailing address. The claimant moved in December 1993, and did not notify the local office with the change of address until some three and one-half months later. The notice of determination was properly sent in December to the claimant's last address on record and therefore, was proper notice. The claimant's failure to properly notify the local office of his change of address resulted in his failing to receive notice of his determination and, therefore, it is the claimant's negligence which resulted in the filing of a late appeal.

DECISION

It is held that the appellant did not 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).

The determination of the Claims Examiner (and any disqualification applied), remains effective and unchanged.



Jon M. Will, 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 Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by June 1, 1994.

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

Date of hearing: April 19, 1994
RC/Specialist ID: 40303
Seq. No. :002
Copies mailed on May 17, 1994 to:

PAUL D. MCLEWEE
NATIONAL CTR ON INSTITUTIONS &
LOCAL OFFICE #40