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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor

EUGENE A. CONTI, JR., Secretary

Board of Appeals

Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

FRANCIS P. SAITTA

Decision No.: 03058-BH-97

Date: September 17, 1997

Appeal No.: 9700001

S.S. No.:

Employer:

JOHNS HOPKINS UNIVERSITY

L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant is monetarily eligible for benefits under Section 8-802 of the Labor and Employment Article.

- 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: October 17, 1997

- APPEARANCES -

FOR THE CLAIMANT:

Francis P. Saitta

FOR THE EMPLOYER:

Gail Purnell, U.I.C. Administrator



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

The employer submitted an additional document, a letter to the claimant dated November 5, 1992, from the employer, regarding his acceptance as a Postdoctoral Fellow. A copy of this letter was already admitted into evidence as Employer Exhibit No. B2. Therefore, Board is not admitting this additional document into evidence.

FINDINGS OF FACT

The claimant worked as a Postdoctoral Fellow for the Johns Hopkins University School of Hygiene and Public Health, from approximately December, 1992 until late 1996. He filed for unemployment insurance benefits, with a benefit year beginning November 3, 1996.

The claimant was accepted for admission as a Postdoctoral Fellow after he was accepted by a faculty member, in this case Dr. Schwartz, for whom he would be directly working.

His work consisted of performing research in Dr. Schwartz's laboratory, for which he was paid semi-monthly. His contract ran for one year at a time at a pre-determined yearly salary or stipend. Federal and State taxes and Social Security contributions were taken out of his gross pay. Dr. Schwartz also agreed to pay for medical insurance for the claimant. The funding for this position came out of a grant that Dr. Schwartz received from a funding source other than Johns Hopkins.

The claimant was not enrolled as a student, nor did he attend any classes or receive academic instruction while working for this employer. The work he performed directly benefited the employer, as well as serving as a learning experience for himself. He did not receive any University "credits" for his work there.

CONCLUSIONS OF LAW

Section 8-220 of the Labor and Employment Article:

- (b) Employment at educational institutions.-- Employment performed in an educational institution is not covered employment if:
 - (1) the employment is performed by a student who is enrolled and regularly attending classes at that educational institution; or
 - (2) the employment is performed by the spouse of the student and immediately before beginning to perform the employment, the spouse is advised that:
 - (i) the employment is under a program of the educational institution to provide financial assistance to the student; and

- (ii) the employment is not covered employment.
- (c) Work experience programs.-- (1) Except as provided in paragraph (2) of this subsection, employment is not covered employment if:
- (i) the individual who performs the employment is enrolled for credit at a not-for-profit or public educational institution that normally has a regular faculty and curriculum and a regularly organized body of students in attendance at the place where its educational activities are carried on;
 - (ii) the employment is an integral part of a full-time program taken for credit at the educational institution that combines academic instruction with work experience; and
 - (iii) the educational institution has certified to the employer the application of this paragraph.
- (2) Employment that an individual performs as part of a program that an educational institution establishes for or on behalf of an employer is covered employment. (An. Code 1957, art. 95A, Section 20; 1991, ch. 8, Section 2.)

The issue in this case, one which the Board has not previously issued a precedent on, is whether a "Postdoctoral Fellow" is a student, in which case his earnings would not be in covered employment, or whether he is an employee, in which case, his services would be covered. The Board concludes that the claimant was an employee in covered employment.

The presumption in Maryland Unemployment Insurance Law is clearly in favor of coverage. The exemptions set out in LE, 8-220 are very specific and a careful review of the facts show that these exemptions do not apply here. The claimant is neither "enrolled and regularly attending classes" nor is he "enrolled for credit." In fact, the evidence supports a conclusion that the services that the claimant performed was on behalf of the employer and therefore, is specifically covered, within the meaning of 8-220(c)(2).

The fact that the claimant was paid through a grant, rather than through more permanent funding and the fact that he was contractual, rather than permanent, does not change his status from employee to student. Universities, as well as other institutions, are filled with employees who are contractual and whose salaries are paid for through grants.

Therefore, the decision of the Hearing Examiner will be reversed.

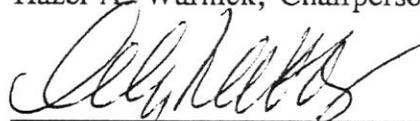
DECISION

The claimant has established that services performed for Johns Hopkins University was in covered employment within the meaning of Maryland Labor and Employment Article Section 8-802 and Section 8-220.

The decision of the hearing examiner is reversed.



Hazel A. Warnick, Chairperson



Clayton A. Mitchell, Sr., Associate Member

dt
Date of hearing: May 28, 1997
Copies mailed to:
FRANCIS P. SAITTA
JOHNS HOPKINS UNIVERSITY
Local Office - #01

UNEMPLOYMENT INSURANCE APPEALS DECISION

FRANCIS P. SAITTA

Before the:

SSN

Claimant

vs.

JOHNS HOPKINS UNIVERSITY

Employer/Agency

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

Appeal Number: 9700001
Appellant: Claimant
Local Office: 01 / Baltimore

January 23, 1997

For the Claimant: PRESENT

For the Employer: GAIL A. PURNELL

For the Agency:

ISSUE(S)

Whether the claimant is in receipt of vacation or holiday pay pursuant to Section 1007 of the Labor and Employment Article, Title 8; whether the claimant is monetarily ineligible because the claimant has not earned sufficient wages during the Base Period pursuant to Section 802 of the law or whether the claimant is entitled to partial unemployment benefits within the meaning of Section 803 of the law.

FINDINGS OF FACT

The claimant applied for unemployment insurance benefits and established a benefit year effective November 3, 1996, and was not credited with a weekly benefit amount because the local office determined that he did not have wages from covered employment.

The claimant argues that his earnings received from a post-doctoral research program were not a part of the institution's financial aid program, but salary paid pursuant to a contract. The facts, however, show that he received a stipend through a research grant and was considered a student, not an employee of the educational institution.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-802 (1991) provides that "(a)n individual is eligible for benefits if, during the base period:

(1) the individual was paid wages of at least the lower quarterly wage amount in line 1 of the schedule of benefits in Section 8-803 of this subtitle for covered employment during the calendar quarter in which the individual's wages were highest; and

(2) the individual was paid wages for covered employment that, during at least 2 calendar quarters combined, are at least 1.5 times the upper limit of the wages for the line in the schedule of benefits for which the individual qualifies."

The claimant did not have sufficient earnings in covered employment in at least two calendar quarters to establish monetary eligibility under the above-cited law.

EVALUATION OF EVIDENCE

The claimant presented a very creative and somewhat logical argument that the monies received were wages and not a stipend. However, the overwhelming evidence, some of which was presented by the claimant, supports the conclusion that in fact he was a student and a recipient of a stipend as a participant in the post doctoral program under the auspices of the university.

Based upon the foregoing, the determination of the claims examiner will be affirmed.

DECISION

IT IS HELD THAT the claimant has failed to establish monetary eligibility within the meaning and intent of Md. Ann. Code, Labor & Emp., Section 8-802 (1991). The claimant is therefore ineligible for the receipt of unemployment insurance benefits.

The determination of the claims examiner is affirmed.



M. S. Welcome, 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 February 7, 1997.

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

Date of hearing: January 15, 1997

RC/Specialist ID: 01047

Seq. No.: 001

Copies mailed on January 23, 1997 to:

FRANCIS P. SAITTA
JOHNS HOPKINS UNIVERSITY
LOCAL OFFICE #01