



DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND  
HARRY HUGHES  
Governor  
KALMAN R. HETTLEMAN  
Secretary

383 - 5032  
- DECISION -

BOARD OF APPEALS

THOMAS W. KEACH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 577-BR-82

DATE: May 12, 1982

APPEAL NO.: 260107

S. S. NO.:

CLAIMANT: Raymond L. Harris

EMPLOYER: Concord Fibers

L. O. NO.: 1 & 10

APPELLANT: REMAND FROM COURT  
REOPENED CASE  
CLAIMANT APPEAL

ISSUE

Whether the claimant failed, without good cause, to file a timely and valid appeal within the meaning of Section 7(c)(ii) of the Law; and whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law; whether, and in what amount, the Claimant was overpaid benefits within the meaning of Section 17(d) 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 SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

June 12, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Raymond L. Harris - Claimant  
Robert E. Farnell, III -  
Attorney At Law

Not Represented

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the testimony and evidence in this case, including the testimony before the Board of Appeals in April 1982, as well as the testimony before the Appeals Referee taken on April 17, 1980. The documents in the file of the Employment Security Administration concerning this claim have also been considered.

### FINDINGS OF FACT

The Claimant was formerly employed by Concord Fibers of Columbia Maryland. On December 23, 1974, he was laid off.

The Claimant applied for unemployment insurance benefits immediately. His address at that time was 4653 Manor Lane, Ellicott City, Maryland, 21043. Although the Claimant filed cards for benefits, he did not receive any benefits until April, 1975. When he received his first check, in April, 1975, he accepted it, but he did not press his claim for the benefits that were due him for January, February and March of 1975.

The Claimant visited the premises of Concord Fibers several times between January 1975 and June 1975, but he learned on each occasion that no work was available for him. During the period between January 1975 and June 1975, the Claimant received no communication of any kind from Concord Fibers about his returning to work.

In June of 1975, the Claimant moved to the Eastern Shore of Maryland. The Claimant filed no claims subsequent to his move to the Eastern Shore of Maryland. The Claimant's companion remained at the Manor Lane address until approximately August 1975, when she joined the Claimant on the Eastern Shore of Maryland.

On August 9, 1975, the Employment Security Administration made a determination that the Claimant had voluntarily quit his employment with Concord Fibers on April 17, 1975, because the company had been unable to contact him on that day. This determination penalized the Claimant from April 17, 1975 until he became re-employed, earned at least ten times his weekly benefit amount and thereafter became unemployed through no fault of his own. This determination also notified the Claimant that he was overpaid benefits for the nine weeks between April 19, 1975 and June 14, 1975, in a total amount of \$441.00. This determination was mailed to R. L. Harris, 4115 Manor Lane, Ellicott.

The Claimant obtained employment on the Eastern Shore of Maryland. He was employed regularly for several years until 1980, when he was laid off from Charles E. Brohawn & Brothers Company. When he applied for benefits in January of 1980 as result of having been laid off from the Brohawn Company, the Claimant, after much correspondence to agency and government officials, was notified for the first time of the overpayment determined on August 9, 1975.

The Claimant then proceeded to appeal this overpayment to the Appeals Referee, to the Board, and to the Circuit Court. The Circuit Court remanded this case to the Board of Appeals for a new hearing, further fact finding and a decision.

There is an allegation reported to the Board of Appeals by the Claimant and his attorney that the overpayment which the Claimant is alleged to owe totaled not \$441.00, but \$801.00. There was no notification from the Employment Security Administration to the Claimant of any allegation of overpayment in the amount of \$801.00 until 1981.

#### CONCLUSION OF LAW

Section 17(f) of the Law clearly precludes the Employment Security Administration from determining to recoup benefits after three years had passed since the benefits were first paid. Therefore, the decision, made in 1981, to change the amount of overpayment from \$441.00 to \$801.00, cannot be affirmed by the Board. The three year limitation in Section 17(f) clearly prohibits this new determination of overpayment from being made six years after the payments were made.

The Board concludes, however, that the determination of the \$441.00 overpayment was also an incorrect determination. The determination of August 9, 1975 was never mailed to the last known address of the Claimant. That determination was mailed not only to the wrong house number, but in an envelope without a city, state, or zip code. Therefore, the determination dated August 9, 1975 was never mailed to the Claimant's last known address within the meaning of Section 7(c)(ii) of the Maryland Unemployment Insurance Law. Therefore, the Claimant's opportunity to appeal that determination did not come into effect until he received actual notice of that determination. When the Claimant received actual notice of that determination in 1980, he properly appealed it and has been appealing it since. Since the Claimant has properly and timely exercised his appeal rights, the Board of Appeals will proceed to the merits of the case concerning that determination of August, 1975.

Because the Board concludes that a determination was never mailed to the correct last known address of the Claimant, it is unnecessary to reach the issue of whether or not the Claimant could be bound by a determination mailed to his last known address, when the Claimant had stopped filing claims or otherwise dealing with the agency and had left the area, and two months had passed.

Concerning the merits of the determination of August 1975, the Board Appeals finds first that the wrong section of the Law was applied. The Claimant was clearly laid off from his employment; at no time did he quit. If he did refuse suitable work, the disqualification should have been under Section 6(d) of the Law. The facts, however, clearly show the Claimant was not offered any work by Concord Fibers from the time he was laid off on December 23, 1974 until the present. The determination dated August 9, 1975 is therefore without any basis in fact, and it will therefore be reversed.

Since the determination of August 1975 is reversed, the overpayment of \$441.00 noted on that determination is inappropriate. Therefore, determination of overpayment under Section 17(d) of the Law for \$441.00 for the weeks between April 19, 1975 and June 14, 1975 is reversed.

DECISION

The Claimant did not voluntarily quit his employment within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The penalty imposed from April 19, 1975 through June 14, 1975 is rescinded.

The Claimant was not overpaid, under Section 17(d) of the Law, \$441.00 for the weeks ending April 19, 1975 through June 14, 1975. The previous decisions of the Referee and the Board, affirming an overpayment of \$441.00 for this period, are rescinded.

The Claimant was not overpaid \$801.00 for the period between April 19, 1975 and June 14, 1975 under Section 17 (d) and 17(f) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee and the previous decision of the Board are reversed.

Thomas W. Keesh  
Chairman

Maurice E. Dill  
Associate Member

K:D  
gm

DATE OF HEARING: APRIL 20, 1982

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Robert E. Farnell, III, Esquire

UNEMPLOYMENT INSURANCE - BALTIMORE

UNEMPLOYMENT INSURANCE - CAMBRIDGE



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383 - 5040

STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

BOARD OF APPEALS

JOHN J. KENT  
 Chairman

HENRY G. SPECTOR  
 HAZEL A. WARNICK  
 Associate Members

- DECISION -

CLAIMANT: Raymond L. Harris

DATE: Apr. 23, 1980  
 SEVERN E. LANIER  
 Appeals Counsel

APPEAL NO.: 260107  
 GARY SMITH  
 Chief Hearings Officer

S.S. NO.:

EMPLOYER: Concord Fibers

L.O. NO.: 1 & 10

APPELLANT: Claimant

ISSUE: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. Whether the claimant filed a timely and valid appeal within the meaning of Section 7(e) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 511, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON May 2, 1980

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Raymond L. Harris - Claimant  
 Represented by Robert E. Farnell, III, Esquire

Not Represented

FINDINGS OF FACT

Notice of the Claims Examiner's determination was mailed to the claimant at his address of record on August 9, 1975, informing him that he had been denied benefits on the ground that his unemployment was due to voluntarily leaving his job, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. This determination states on its

face that an appeal could be filed within 15 days after the date thereof, either in person or by writing to the local claim office where claims are filed, and that August 19, 1975 was the last day to file an appeal. The claimant filed his appeal in writing on February 8, 1980.

The claimant indicated that after filing his claim for unemployment, he moved and did not give a forwarding address to the Agency. The copy of the determination was apparently sent to his old address, but he did not receive it until he questioned it for the first time in February of 1980. At that time, he received a copy of the determination and filed his appeal.

COMMENTS

The Maryland Unemployment Insurance Law, Section 7(e), provides that:

"The claimant or any other party entitled to notice of a determination as herein provided, may file an appeal from such determination with the Board of Appeals within 15 days after the date of mailing of the notice to his last known address or if such notice is not mailed, within 15 days after the date of delivery of such notice..."

Since the claimant did not file an appeal within the 15 day Statutory period, the Appeals Referee is without jurisdiction to consider the merits of the case.

DECISION

The claimant failed to file a timely appeal.

The determination of the Claims Examiner that the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Law, stands. The denial of benefits for the week beginning April 17, 1975 and until such time as the claimant becomes re-employed and earns at least ten times his weekly benefit amount (\$890) and thereafter becomes unemployed through no fault of his own, remains unchanged.

  
William R. Merriman  
Appeals Referee

H2

Date of hearing: 4/17/80  
cp/#65  
(1252)

Copies mailed to:

Claimant  
Employer  
Unemployment Insurance - Baltimore  
Unemployment Insurance - Cambridge

Robert E. Farnell, III, Esquire

H3