



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**

STATE OF MARYLAND

**HARRY HUGHES
Governor**

-DECISION-

**SEVERNE LANIER
Appeals Counsel**

	DECISION NO.:	619-BH-84
	DATE:	July 6, 1984
CLAIMANT: William F. Ham	APPEAL NO.:	OP-161
	S.S.NO.:	
EMPLOYER: Abacus Corporation	LO. NO.:	1
	APPELLANT:	AGENCY

ISSUE: Whether the Claimant has made a false statement or representation knowing it to be false or has knowingly failed to disclose a material fact to obtain or increase any benefits or other payment within the meaning of § 17(e) of the Law; and whether the Claimant failed, without good cause, to file a timely and valid appeal within the meaning of § 7(c) (ii) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT August 5, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

DEPARTMENT OF EMPLOYMENT AND TRAINING
John Roberts - Legal Counsel
Jan Bloom - Claims Specialist III

William F. Harem - Claimant
Harold Buchman - Attorney

Mary Smith -
Receptionist for -
Loughlin Security
Michael Van
Nostrand -
Personnel
Supervisor

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

On the issue of whether the Claimant had good cause to file a late appeal within the meaning of § 7(c) (ii), the evidence from the Claimant was somewhat confusing. However, the Board will give the Claimant the benefit of the doubt and accept his testimony that his appeal was one day late due to his having been recently hospitalized.

With regard to the issue of § 17(e) of the Law, the Board of Appeals does not find the Claimant's explanations to be credible.

FINDINGS OF FACT

The Claimant filed a claim for unemployment insurance benefits, with a benefit year beginning May 5, 1982 and a weekly benefit amount of \$100.00. The Claimant collected weekly benefits from May 5, 1982 through January 29, 1983.

For each week that the Claimant collected these benefits, he filled out claim cards and on each check he received, he endorsed and certified that during the week for which the check was being paid he performed no services for which earnings were paid or payable.

However, during this period of time, the Claimant performed services and received earnings from two different corporations. The Claimant worked part time for seven weeks for the Loughlin Security Agency, Inc. between May 15, 1982, and July 30, 1982 and had earnings for each of those weeks ranging from \$28.00 per week to \$138.25 per week. He also worked for the Abacus Corporation for seven weeks between July 23, 1982, and October 8, 1982 and earned between \$40.20 and \$132.32. For each of these weeks, the Claimant failed to notify the Agency that he was working and certified on each of his checks that he was not working.

The Agency became aware of this situation in August, 1983 and an investigation was done that resulted in a determination by a Claims Examiner that the Claimant was overpaid and had violated § 17(e) of the Law. On August 31, 1983, a copy of this determination was mailed to the Claimant, informing him that he had until September 15, 1983 to file an appeal. The Claimant filed his appeal on September 16, 1983, due to his having been recently hospitalized.

CONCLUSIONS OF LAW

The first issue to be decided in this case is whether or not the Claimant had good cause to file a late appeal, within the meaning of § 7(c) (ii) of the Law.

Based on the evidence presented by the Claimant, the Board concludes that he did have good cause to file a late appeal.

The second issue is whether or not the Claimant made a false statement, knowing it to be false or knowingly failed to disclose a material fact, in order to obtain or increase his benefits, within the meaning of § 17(e) of the Law.

The clear and uncontraverted evidence is that the Claimant failed to inform the Agency for numerous weeks that he was working and earning money and that as a result he received unemployment insurance benefits for those weeks, to which he was not entitled. Although the Claimant's claim cards for the specific weeks in question were not available, the evidence of the checks endorsed by the Claimant, on which he certified that he performed no services for which he was paid, coupled with the evidence from the Claimant's employers that he was working and receiving wages during those weeks, prove conclusively that the Claimant was violating § 17(e) of the Law. The Board does not conclude that the Claimant merely made a mistake, but finds that his actions were deliberate and willful.

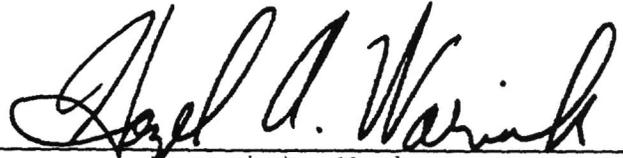
DECISION

The Claimant failed, but with good cause, to file a timely and valid appeal within the meaning of § 7(c) (ii) of the Maryland Unemployment Insurance Law.

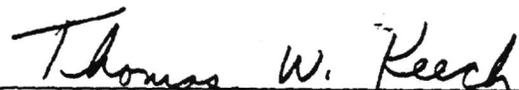
The Claimant made a false statement knowing it to be false and knowingly failed to disclose a material fact to obtain or increase his unemployment insurance benefits within the meaning of § 17(e) of the Law. He is disqualified from August 31, 1983 to August 30, 1984.

The decision of the Appeals Referee regarding § 7(c) (ii) of the Law is affirmed.

The decision of the Appeals Referee regarding § 17(e) of the Law is reversed.


Associate Member


Associate Member


Chairman

W:D:K
dp

DATE OF HEARING: June 5, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John Roberts - Legal Counsel

Harold Buchman

Loughlin Security Agency, Inc.

UNEMPLOYMENT INSURANCE - BALTIMORE



STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
1100 NORTH EUTAW STREET
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BOARD OF APPEALS

THOMAS W. KEECH
Chairman

MAURICE E. DILL
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Administrative
Hearings Examiner

- DECISION -

CLAIMANT:	William F. Hamm	DATE:	March 13, 1984
		APPEAL NO.:	OP-161
		S. S. NO.:	
EMPLOYER:	Abacus Corporation	LO. NO.:	1 --
		APPELLANT:	Claimant

ISSUE: Whether the claimant has made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to obtain or increase any benefits or other payment within the meaning of Section 17(e) of the Law. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c) (ii) 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 March 28, 1984

- APPEARANCES -

FOR THE CLAIMANT:

William F. Harem - Claimant
Harold Buchman - Attorney

FOR THE EMPLOYER:

Edward M. Campbell -
Supervisor - Abacus Corp.
John A. Jeffery -
Director of. Personnel and
Labor Relations -
Loughlin Security
Agency, Inc.

Other: John Bloom - Claims Specialist
111 - Claims Investigation -
Department of Employment and Training

FINDINGS OF FACT

On August 31, 1983, a copy of the Claims Examiner's determination was mailed to the claimant at his address of record. This determination informed the claimant that he had until September 15, 1983 to file an appeal. The claimant filed his appeal on September 16, 1983. In a phone call with the Local Office on or about September 15, 1983, the claimant explained he had recently been hospitalized and that he could not come into the Local Office on that day. He expressed his intent to file his appeal and was told to report to the Local Office as soon as possible. The appeal is timely.

The claimant filed for unemployment insurance benefits, establishing a benefit year effective May 5, 1982 and a weekly benefit amount of \$.91.00 base and \$9.00 dependents allowance. The claimant filed for and collected unemployment insurance benefits each in the amount of \$100.00 for the time period in issue (the week beginning May 16, 1982 through January 29, 1983). For some of those weeks, the claimant had employment. He worked for one employer (Loughlin Security Agency, Inc.) for some weeks between May 15, 1982 and July 30, 1982. He worked for another employer (the Abacus Corporation) between July 23, 1982 and October 8, 1982. The claimant did not have full-time employment from either of these employers. The claimant mistakenly believed that \$100.00 of unemployment insurance benefits was "partial" unemployment insurance benefits, to which he was entitled in that he was supposed to get \$150.00 as "total" unemployment insurance benefits. He did not understand that he was to report partial as well as total employment and wages therefrom. He was under the impression that the Agency knew what he was earning believing that the employers reported directly to the Agency when he had any employment. The claimant intended no wrongdoing and did not intentionally fail to disclose facts in order to collect unemployment insurance benefits.

CONCLUSIONS OF LAW

It is held that the appeal is timely.

It is held that the claimant did not commit fraud within the meaning and intent of Section 17(e) of the Maryland Unemployment Insurance Law. Since he was unemployed for some of the claim weeks in issue, he may be entitled to some unemployment benefits during that time period. Any benefits to which he was not entitled are recoverable under Section 17(d) of the Maryland Unemployment Insurance Law.

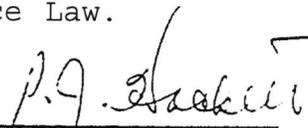
DECISION

The appeal is timely.

The claimant did not commit fraud within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law. The disqualification imposed from August 31, 1983 to August 30, 1984 under that provision of the Statute is hereby rescinded.

The determination of the Claims Examiner under that issue is hereby reversed.

That the claimant was employed some of the claim weeks in issue may be entitled to some unemployment insurance benefits for the time period between May 15, 1983 and October 8, 1982 as computed by the Local Office. Benefits that he received to which he is not entitled for the time period in issue are recoverable under Section 17(d) of the Maryland Unemployment Insurance Law.



 P. J. HACKETT
 Appeals Referee

Date of hearing: 2/23/84
 amp/1786
 (Bloom)
 1354, 1355
 Copies mailed to:

Claimant

Abacus Corporation (Employer)

Metropolitan International (Employer)

Loughlin Security Agency, Inc. (Employer)

Harold Buchman, Esquire

Donna Gross - Room 414

Recoveries - Room 411