



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032*

*Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	994 -BH-91
	Date:	August 12 , 1991
Claimant: Ronald Faulcon	Appeal No.:	9103211, 9103212 & 9103213
	S. S. No.:	
Employer: Warren-Ehret Co. of Maryland	L. O. No.:	40
	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 benefit or other payment within the meaning of Section 17(e) of the law; whether the claimant was unemployed within the meaning of Section 20(1) 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

September 11, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Ronald Faulcon, Claimant

FOR THE EMPLOYER:

John T. McGucken, Legal Counsel, D.E.E.D.

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 Economic and Employment Development's documents in the appeal file.

The only two issues in this case are whether the claimant had earnings from employment in certain weeks for which he applied for unemployment insurance benefits and whether he made a false statement about those earnings in order to increase his amount of benefits. The employer did not appear in this case, and thus no person with direct knowledge of these facts testified under oath and subject to cross-examination. The claimant testified under oath that he did not have the earnings which the employer's documents said that he had. The Board is hesitant to take the word of the employer's documents over the claimant's sworn testimony on this matter, but the Board will do so in this case because the claimant's testimony was extremely vague, evasive and unconvincing, and because it related an extremely unlikely scenario. For this reason, the Board will find as a fact that the claimant had the earnings alleged.

With respect to the allegation that the claimant filed a false statement in order to increase his benefits, the Board notes that virtually no evidence whatsoever was introduced by the agency on this issue. The claim cards on which the allegedly false statements were made were not entered into evidence, nor was a single claim check. A claim check could show at least that the claimant endorsed a statement saying that he had not worked during the week in question. The only evidence that the claimant made a false statement is that the agency's computer paid an excessive amount of benefits during a number of weeks. The agency counsel would have the Board infer that this payment of excess benefits resulted from the claimant filing a false statement. There are many other reasons, of course, why excess payments could have been made. The Board is repeatedly confronted with cases in which excess payments were made to claimants who made full and complete disclosure of disqualifying occurrences. This claimant may well have made false statements in order to increase his benefit amount, but there is no direct evidence of this, and it would be going too far to infer this from the fact that he received excess payments.

FINDINGS OF FACT

The claimant filed a claim for benefits for which he was eligible for \$156 in regular benefits and \$24 in dependents' allowance, totaling \$180.00 per week. This was the amount he

was eligible for during weeks in which he had no earnings. During the weeks ending November 11, 18 and 25, 1989, the claimant earned respectively, \$340, \$435 and \$356. He was paid during those weeks \$106, \$106 and \$79. Because of his earnings, he was eligible for no money for any of those three weeks. All of these payments are thus overpayments.

For the weeks ending January 6, 13 and 20, 1990, the claimant earned \$336, \$231 and \$454. He received in benefits \$106, \$52 and \$180, none of which was due him and all of which is also an overpayment.

For the week ending January 27, 1991, the claimant earned \$217. He is entitled to a \$35 disregard under Section 3(b)(3) of the law. Thus, \$178 should be deducted from his benefit amount of \$180. He was also entitled to \$2.00 in benefits. He received, however, \$180 for that week. He is thus overpaid \$178 for that week.

For the weeks ending February 3, 10, 17 and 24, 1990, the claimant earned \$397, \$393, \$434 and \$238. For each of those weeks, he received \$180 in benefits. He was entitled to no benefits during those weeks, and each of those \$180 payments was an overpayment.

CONCLUSIONS OF LAW

There is insufficient evidence to find that the claimant knowingly filed a false statement in order to increase his benefit amount. Therefore, the Board will find that the claimant did not knowingly submit a false statement within the meaning of Section 17(e) of the law.

The claimant was not unemployed, within the meaning of Section 20(1) of the law, for ten of the eleven weeks in question. For the week ending January 17, 1991, he was partially unemployed, but he was eligible or only \$2.00 in benefits for that week.

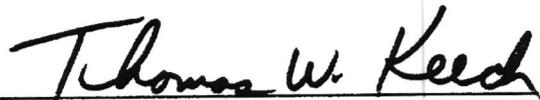
The claimant, however, was clearly overpaid benefits within the meaning of Section 17(d) of the law for the weeks above. He was entitled to a total of \$2.00 in benefits for the 11 weeks mentioned above. He received, however, \$1,529 for those same weeks. He is thus overpaid \$1,527 within the meaning of Section 17(d) of the law.

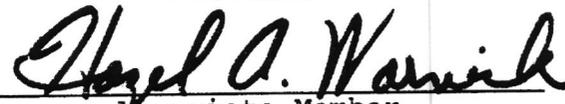
DECISION

The claimant was not unemployed, within the meaning of Section 20(1) of the law, for all of the eleven weeks in question except the week ending January 17, 1991. During that week, he was partially unemployed.

The claimant was overpaid benefits within the meaning of Section 17(d) of the Maryland Unemployment Insurance Law. For the 11 weeks in question, he was overpaid a total of \$1,527. This amount must be repaid by the claimant. The decision of the Hearing Examiner is reversed with respect to Section 17(d) of the law.

The claimant did not knowingly file a false statement in order to increase benefits within the meaning of Section 17(e) of the Maryland Unemployment Insurance Law. The decision of the Hearing Examiner with respect to Section 17(e) of the law is affirmed.


Chairman


Associate Member

K:HW

kbm

Date of Hearing: July 23, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

John T. McGucken, Legal Counsel, D.E.E.D.

Recoveries - Room 413

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

Date:	Mailed: 3/28/91
Claimant: Ronald N. Faulcon	Appeal No.: 9103211, 9103212 & 9103213
	S. S. No:
Employer: Warren-Ehret Co. of Md., Inc.	L.O. No.: 40
	Appellant: CLAIMANT

Issue: Whether the claimant made a false statement to obtain or increase benefits, under Section 17(e) of the Law and whether the claimant was unemployed within the meaning of Section 20(1) 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

April 12, 1991

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— A P P E A R A N C E S —

FOR THE CLAIMANT:
Claimant Present

FOR THE EMPLOYER:
Not Represented

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
Jack Fuchs - U. I. Specialist III

FINDINGS OF FACT

The claimant was employed by the Warren-Ehret Company, Inc. in August of 1988. At the time of his separation from employment in February of 1989, he earned \$13.85 an hour as a roofer.

The claimant was injured on the job in September of 1989 and filed a claim for Workmen's Compensation Benefits. From November 5, 1989 through November 25, 1989, the claimant worked on a part-time basis for the employer. He also filed claims for partial unemployment insurance benefits and reported his earnings on the claim certification forms. The claimant stopped working in December of 1989 and returned to work in January of 1990. For the weeks ending January 6, 1990 and January 13, 1990, the claimant worked part time for the employer and reported his earnings on claim certification forms. The claimant also received partial unemployment insurance benefits. For the week ending January 20, 1990 through February 24, 1990, the claimant did not work and received unemployment insurance benefits.

The employer reported earnings to the unemployment agency that exceeded the amounts reported by the claimant. However, the amounts reported by the employer included Workmen's Compensation payments.

CONCLUSIONS OF LAW

Article 95A, Section 20(1) states that an individual shall be deemed unemployed in any week during which he performs no services and with respect to which no wages are payable to him or in any week of less than full-time work if the wages payable to him with respect to such week, are less than his weekly benefit amount plus allowances for dependents. In this case, the claimant was partially unemployed for the week beginning November 5, 1989 and ending January 13, 1990, earning less than his weekly benefit amount. He was also unemployed for the week beginning January 14, 1990 and ending February 24, 1990, earning no wages for performance of services.

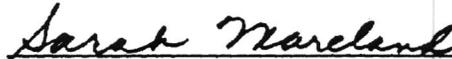
Article 95A, Section 17(e) provides that a claimant who makes a false statement or fails to disclose a material fact in order to obtain or increase unemployment insurance benefits shall be disqualified. In this case, the earnings reported by the employer in excess of the amounts reported by the claimant were Workmen's Compensation payments and not earnings within the meaning of Section 17(e) of the Law.

DECISION

The claimant was unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law.

The claimant did not make a false statement in order to obtain or increase benefits within the meaning of Section 17(e) of the Law. Benefits are allowed.

The determination of the Claims Examiner is reversed.



Sarah Moreland
Hearing Examiner

Date of Hearing: March 18, 1991
kmb/Specialist ID#80819/3000

Copies mailed on March 26, 1991 to:

Claimant

Employer

Unemployment Insurance - Eastpoint (MABS)

Recoveries - Room 413