

DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

STATE OF MARYLAND

**HARRY HUGHES
Governor**

BOARD OF APPEALS

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**HAZEL A. WARNICK
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Associate Members**

**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

Decision No.: 571 -BR-86

Date: July 25 , 1986

Claimant: Theodore M. Eaton

Appeal No.: 8511184

S. S. No.:

Employer:

L.O. No.: 1

Appellant: CLAIMANT

Issue: Whether the claimant was unemployed within the meaning of Section 20(1) of the law; whether the claimant is eligible for benefits pursuant to Section 3(b) of the law; and whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) 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 ON August 24 , 1986

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The claimant was employed for approximately 20 years for the Bethlehem Steel Corporation. He filed a claim for unemployment benefits during a period of layoff. The effective date of his claim was October 7, 1984. He was unemployed through much of the following year but was recalled to work in September of 1985.

Throughout his claims period, the claimant submitted cards to the agency stating that he was self-employed. He also had noted that he was not working full or part-time for an employer.

Throughout his 20 years of employment with Bethlehem Steel Corporation, the claimant also sporadically worked at his parent's store, which was a dry cleaning, tailoring, and dry goods establishment. In 1984, the claimant inherited this business through his parent's will. He hired another person to run the business and continued to work at Bethlehem Steel Corporation. Both before and after the time he was laid off from Bethlehem Steel Corporation, the claimant worked a maximum of four hours per week in the store. There were many weeks when he did not visit the store at all.

The store made earnings attributable to the one employee's services, the claimant's wife's services, and the claimant's sporadic services. The amount of money made by the business was approximately \$340.00 per month, of which the great majority was donated to the claimant's church.

The Hearing Examiner's conclusions of law are blatantly wrong. The Board of Appeals has consistently ruled for a number of years that there is no disqualification in the law under Section 20(1) based upon the self-employment of a claimant. Veith (34-BR-82). See also, Dayton (199-BR-83), and Rose (755-BH-81). There is simply no disqualification in Section 20(1) based upon a person's self-employment.

Of course, a person who is devoting a substantial amount of time to self-employment may not be meeting the requirements of Section 4(c) of the law. See, e.g., Pearson v. Arrow Cab Company (153-BR-83) (cab driver spending 36 to 40 hours per week); Veith (34-BR-82) (claimant spending 25 hours per week promoting his own business). A claimant's limited involvement in winding up the affairs of a corporation which had been sold did not render a claimant ineligible under Section 4(c). Kahler v. Old Town Sound Company (88-SE-82). Absent evidence that a claimant limited her job search in any material way, the fact that she assisted her husband in his business several hours per week was found to be not disqualifying under Section 4(c). Hebb v. Leonard's Movers (1077-BH-81).

Of course, once it is shown that a claimant performs services for his own business and that the business has grossed a substantial income, the burden is on the claimant to show that none of the business receipts have gone to reimburse himself for the personal services performed on behalf of the business. Witt (550-BH-83).

Using the standards cited above, it is clear that the claimant should not be disqualified for being self-employed under Section 20(1) of the law. Likewise, it is clear that the claimant is not spending sufficient amounts of time tending to the business to render him unavailable for work within the meaning of Section 4(c) of the law. The only substantial question about his eligibility which has been raised is whether the profits of the business should be attributed to him as earnings in self-employment during the same period that he was filing claims.

It is difficult, of course, to segregate those profits arising out of ownership of the business from that remuneration earned by the claimant for his own services in the business. There is, of course, no disqualification from unemployment insurance benefits from receiving profits due to an ownership in the business. One thinks, for example, of an employed claimant who owns stock in a publicly listed company. The dividends from the stock would not be deducted from the unemployment insurance benefits. Of course, under the Witt case, the burden of proof is on the claimant. Since, however, in this case, the business was not earning any substantial profit, and since the claimant performed very minimal services in some weeks and no services at all in other weeks, it would be frivolous for the Board to attribute any of this profit as remuneration for the personal services of the claimant. For this reason, no disqualification or reduction in benefits will be imposed based upon earnings within the meaning of Section 3(b) of the law.

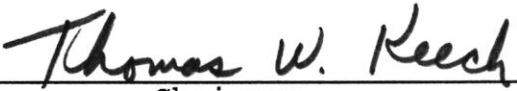
DECISION

No disqualification is imposed under Section 20(1) of the law based upon the fact of the claimant's self-employment.


No disqualification is appropriate under Section 4(c) of the law based upon the services performed by the claimant.

No disqualification or reduction in benefits is appropriate under Section 3(b) of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Julian L. Lapidés

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

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MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed: Jan. 9, 1986

Claimant: Theodore M. Eaton

Appeal No.: 8511184

S. S. No.:

Employer:

L.O. No.: 1

Appellant: Claimant

Issue: Whether the Claimant was unemployed within the meaning of Section 20(1) of the Law. Whether the Claimant is overpaid benefits within the meaning of Section 17(d) 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 515, 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 January 24, 1986

— APPEARANCES —

FOR THE CLAIMANT:

Theodore M. Eaton - Present

FOR THE EMPLOYER:

FINDINGS OF FACT

The Claimant filed an original claim for unemployment insurance benefits effective October 7, 1985.

The Claimant has been employed by Bethlehem Steel Corporation, for approximately twenty years, his last job classification as a moldman helper at an hourly wage rate of \$11.52. When his separation from employment occurred, he began filing his claim for unemployment insurance benefits. The Claimant has been again working for this Employer as of September, 1985.

At the time of filing his initial claim for unemployment insurance benefits, the Claimant indicated that he was self-employed. The Claimant provided his name on a document of this Department of the business as owner in 1973 in order for his family to obtain monies from the Small Business Administration to relocate his parents' dry-cleaning business and for purchasing new dry-cleaning equipment. The amount of the Small Business Administration loan was approximately \$27,000.00. His parents ran this business until June, 1982, when by will, the Claimant was designated the sole owner of the dry-cleaning business. The Claimant ceased dry-cleaning on the premises sometime in 1984.

The Claimant admits to handling the disbursement of checks for the business which operates Wednesday, Thursday, Friday and Saturday of each week during the business hours of nine-thirty a.m. to six p.m. The Claimant has one employee in addition to his wife who keeps the payroll and other records. The Claimant on occasions did dry-cleaning work and tailoring chores for the business. The Claimant has provided the Department business records which indicate that there was a profit in the business of approximately \$100.00 a month during the period of time that he was receiving unemployment insurance benefits. This figure does not include monies taken from the business which was contributed to a church in the amount of \$60.00 a week.

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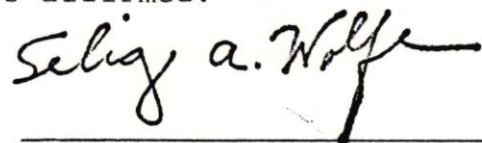
CONCLUSIONS OF LAW

The Claimant's actions in paying the bills or signing the checks, in addition to performing services such as doing tailoring work during the same time that he was receiving unemployment insurance benefits, demonstrates acts of self-employment. In addition, the Claimant was designated as sole survivor of the business. The determination of the Claims Examiner was therefore warranted and will be sustained.

DECISION

The Claimant was not unemployed under the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law. The Claimant is disqualified from receiving unemployment insurance benefits for the week beginning October 7, 1984, until he is no longer self-employed.

The determinations of the Claims Examiner is affirmed.



Selig A. Wolfe
Senior Hearings Examiner

esp/ Chappell
(#8947)

DATE OF HEARING - November 27, 1985

COPIES MAILED ON January 9, 1986 to:

CLAIMANT

UNEMPLOYMENT INSURANCE - EASTPOINT

Donna Gross - Room 413