

SENATE BILL 685

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1998 Regular Session
8lr2412
CF 8lr2288

By: **Senator Bromwell**

Introduced and read first time: February 12, 1998

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance - Appeals**

3 FOR the purpose of making certain changes respecting the standing of the Secretary
4 of Labor, Licensing, and Regulation in certain appeals involving unemployment
5 insurance; providing a certain effective date; and generally relating to
6 unemployment insurance.

7 BY repealing and reenacting, with amendments,
8 Article - Labor and Employment
9 Section 8-509, 8-510, 8-512, and 8-806
10 Annotated Code of Maryland
11 (1991 Volume and 1997 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Labor and Employment**

15 8-509.

16 (a) An individual who files a claim for benefits or an employer entitled to
17 notice of a determination or redetermination of the claim may file an appeal with the
18 Board of Appeals within 15 days after notice of the determination or redetermination
19 is mailed to the claimant or employer at the last known address of the claimant or
20 employer or otherwise is delivered.

21 (B) THE SECRETARY, AT THE SECRETARY'S DISCRETION, MAY BE A PARTY TO
22 AN APPEAL FILED BY A CLAIMANT OR EMPLOYING UNIT WITH THE BOARD OF
23 APPEALS.

24 [(b)] (C) (1) Unless an appeal filed under subsection (a) of this section is
25 withdrawn or removed to the Board of Appeals, a hearing examiner designated by the
26 Board of Appeals shall:

27 (i) give the parties a reasonable opportunity for a fair hearing in
28 accordance with the notice provisions in §§ 10-207 and 10-208 of the State

1 Government Article, except that the notice is not subject to § 10-208(b)(4) and (7) of
2 the State Government Article;

3 (ii) make findings of fact and conclusions of law, based on a
4 preponderance of evidence, in accordance with § 10-217 of the State Government
5 Article; and

6 (iii) on the basis of the findings of fact and conclusions of law,
7 affirm, modify, or reverse a determination or redetermination.

8 (2) The Board of Appeals may transfer an appeal from 1 hearing
9 examiner to another or remove an appeal to itself.

10 [(c)] (D) The hearing examiner promptly shall give each party:

11 (1) notice of the decision of the hearing examiner in accordance with §
12 10-221 of the State Government Article; and

13 (2) a copy of the decision and the findings of fact and conclusions of law
14 that support the decision.

15 [(d)] (E) The decision of the hearing examiner is final unless further review is
16 initiated under § 8-510 of this subtitle.

17 8-510.

18 (a) A party who wishes to file an appeal with the Board of Appeals shall do so
19 within 15 days after notice of the decision of a hearing examiner or determination of
20 the Secretary was mailed to the party at the last known address of the party or
21 otherwise was delivered to the party.

22 (b) After a hearing examiner makes a final decision under § 8-509 of this
23 subtitle:

24 (1) if the hearing examiner does not affirm the determination or
25 redetermination of a claim, the Board of Appeals shall allow an appeal by EITHER
26 THE SECRETARY, OR a party entitled to notice of the decision, OR BOTH; and

27 (2) if the hearing examiner affirms the determination or
28 redetermination of a claim, the Board of Appeals may allow an appeal by a party
29 entitled to notice of the decision.

30 (c) Within the time limit for filing an appeal under subsection (a) of this
31 section, on its own motion the Board of Appeals may initiate a review of the decision
32 of a hearing examiner.

33 (d) On review on its own motion or on appeal, the Board of Appeals may
34 affirm, modify, or reverse the findings of fact or conclusions of law of the hearing
35 examiner on the basis of:

36 (1) evidence submitted to the hearing examiner; or

1 (2) evidence that the Board of Appeals may direct to be taken.

2 (e) A proceeding removed or appealed to the Board of Appeals shall be heard
3 by a quorum.

4 8-512.

5 (a) (1) [Any party who is aggrieved by a final decision of the Board of
6 Appeals may appeal the decision to a circuit court.] A FINAL DECISION OF THE
7 BOARD OF APPEALS MAY BE APPEALED TO A CIRCUIT COURT BY ANY PARTY
8 AGGRIEVED BY THE DECISION, THE SECRETARY, OR BOTH.

9 (2) IN ADDITION TO STANDING AUTHORIZED UNDER PARAGRAPH (1) OF
10 THIS SUBSECTION, THE SECRETARY MAY APPEAL ON BEHALF OF THE FEDERAL
11 GOVERNMENT ANY DECISION OF THE BOARD OF APPEALS IN WHICH THE SECRETARY
12 IS AN AGENT OF THE FEDERAL GOVERNMENT AND RESPONSIBLE FOR THE
13 ADMINISTRATION OF A FEDERAL UNEMPLOYMENT COMPENSATION PROGRAM.

14 [(2)] (3) The Board of Appeals may be a party to an appeal under this
15 section and may be represented by the Attorney General or by any qualified lawyer
16 who is a regular salaried employee of the Board of Appeals and who has been
17 designated by it for that purpose on recommendation of the Attorney General.

18 [(3)] (4) A court or an officer of a court may not charge an individual who
19 claims benefits a fee in any proceeding under this title.

20 (b) An employer that is aggrieved by a final decision under § 8-602 or § 8-629
21 or § 8-638 of this title may appeal to the circuit court for Baltimore City or for a
22 county where the employer does business.

23 (c) The Board of Appeals may certify to a circuit court a question of law that is
24 involved in a decision by the Board of Appeals.

25 (d) In a judicial proceeding under this section, findings of fact of the Board of
26 Appeals are conclusive and the jurisdiction of the court is confined to questions of law
27 if:

28 (1) findings of fact are supported by evidence that is competent,
29 material, and substantial in view of the entire record; and

30 (2) there is no fraud.

31 (e) (1) A circuit court shall give priority to an appeal or a certified question
32 of law under this section over all other civil cases except cases under the Workers'
33 Compensation Law of the State.

34 (2) A circuit court shall hear an appeal or a certified question of law
35 under this section in a summary manner.

1 (f) In a judicial proceeding under this section, a circuit court may not require
2 a person to:

3 (1) enter an exception to a ruling of the Board of Appeals; or

4 (2) post a bond for entering an appeal.

5 (g) A party may appeal from a decision of a circuit court to the Court of Special
6 Appeals in the same manner as provided for in civil cases, consistent with this title.

7 (h) On final decision in a judicial proceeding under this section, the Board of
8 Appeals shall pass an order in accordance with the decision.

9 8-806.

10 (a) (1) Except as provided in subsection (b) of this section a claims examiner
11 promptly shall make a determination on a claim filed under § 8-805(a) of this
12 subtitle.

13 (2) Whenever a determination involves resolution of a dispute of
14 material fact, a claims examiner shall:

15 (i) conduct a predetermination proceeding; and

16 (ii) give each party notice of the time and place of the proceeding.

17 (b) (1) A claim shall be referred to the Board of Appeals if determination of
18 the claim involves:

19 (i) a disqualification based on a stoppage of work due to a labor
20 dispute;

21 (ii) multiple claims; or

22 (iii) a difficult issue of fact or law.

23 (2) The Board of Appeals promptly shall hear and decide each claim
24 referred to it under this subsection.

25 (c) (1) Every initial determination shall state:

26 (i) whether the claimant has been paid the wages required by §
27 8-802 of this subtitle;

28 (ii) the weekly benefit amount of the claimant for the benefit year;
29 and

30 (iii) the maximum benefits payable to the claimant for the benefit
31 year.

32 (2) Each determination shall include a statement as to:

1 (i) whether a claimant is eligible for benefits for the week for
2 which the determination is made;

3 (ii) the benefits to which the claimant is entitled; and

4 (iii) the reasons for the determination.

5 (d) (1) On determination of a claim, the Secretary promptly shall mail notice
6 of the determination to the claimant at the last known address of the claimant or
7 otherwise deliver it to the claimant.

8 (2) Except as provided in paragraph (3) of this subsection, on
9 determination of a claim that involves application of § 8-903(a) of this subtitle or
10 disqualification under Subtitle 10 of this title, the Secretary promptly shall:

11 (i) mail notice of the determination to the last employing unit of
12 the claimant at the last known address of the employing unit or otherwise deliver it to
13 that employer; and

14 (ii) include in the notice the reasons for the determination.

15 (3) If, before a determination, an employer fails to indicate, in
16 accordance with regulations of the Secretary, that a claimant may be disqualified or
17 ineligible for benefits, the Secretary need not notify the employer of the
18 determination.

19 (e) (1) A determination is final as to a claimant and an employer who is
20 entitled to notice of the determination unless:

21 (i) within 15 days after the mailing or other delivery of the notice,
22 the claimant or employer appeals the determination; or

23 (ii) after the time for an appeal on an initial determination has
24 passed, the Secretary may make a redetermination under subsection (f) of this
25 section.

26 (2) The Board of Appeals, for good cause, may extend the time for an
27 appeal under this subsection.

28 (f) (1) If an interested party does not appeal an initial determination, the
29 Secretary may redetermine:

30 (i) the eligibility of the claimant to receive benefits;

31 (ii) the weekly benefit amount of the claimant;

32 (iii) the maximum benefits payable to the claimant in a benefit
33 year; and

34 (iv) the decision to recover an overpayment.

1 (2) In accordance with subsection (d) of this section, the Secretary shall
2 send notice of the redetermination to the claimant and an employer who is entitled to
3 notice.

4 (3) A redetermination is final unless an appeal is filed in accordance
5 with subsection (e) of this section.

6 (g) (1) Within 15 days after the date of mailing of the notice or the date of
7 delivery, a claimant or employing unit entitled to notice of a determination or
8 redetermination under this section may appeal to the Board of Appeals.

9 (2) THE SECRETARY MAY, AT THE SECRETARY'S DISCRETION, BE A
10 PARTY TO AN APPEAL FILED BY A CLAIMANT OR EMPLOYING UNIT WITH THE BOARD
11 OF APPEALS.

12 [(2)] (3) Unless an appeal of a determination or redetermination under
13 this section is withdrawn or removed to the Board of Appeals, a hearing examiner
14 designated by the Board of Appeals shall:

15 (i) give the parties a reasonable opportunity for a fair hearing in
16 accordance with the notice provisions in §§ 10-207 and 10-208 of the State
17 Government Article, except that the provisions of § 10-208(b)(4) and (7) do not apply;

18 (ii) make findings of fact and conclusions of law; and

19 (iii) on the basis of those findings and conclusions, affirm, modify, or
20 reverse a determination or redetermination.

21 [(3)] (4) If an appeal involves an issue of whether employment that a
22 claimant performed is covered employment:

23 (i) the hearing examiner shall give special notice of the issue and
24 appeal to the Secretary and employer; and

25 (ii) on receipt of the notice, the Secretary and employer shall be
26 parties to the proceeding and be given reasonable opportunity to offer evidence on
27 that issue.

28 [(4)] (5) The hearing examiner promptly shall mail to each party at the
29 last known address of the party or otherwise deliver to the party:

30 (i) notice of the decision of the hearing examiner; and

31 (ii) a copy of the decision and the findings of fact and conclusions of
32 law that support the decision.

33 [(5)] (6) A decision under this subsection is final unless within 15 days
34 after the mailing or other delivery of notice of the decision, further review is initiated
35 under subsection (h) of this section.

1 (h) (1) When a party files an appeal of a decision under subsection (g) of this
2 section:

3 (i) if the hearing examiner did not affirm the determination or
4 redetermination of the claim, the Board of Appeals shall allow the appeal; and

5 (ii) if the hearing examiner affirmed the determination or
6 redetermination, the Board of Appeals may allow the appeal.

7 (2) On the filing of an appeal or on its own motion, the Board of Appeals
8 may affirm, modify, or reverse the findings and conclusions of a hearing examiner on
9 the basis of evidence that was submitted previously in the case or that the Board of
10 Appeals directs to be taken.

11 (3) The Board of Appeals promptly shall mail notice of its decision,
12 including its findings and conclusions, to the last known address of each party or
13 otherwise deliver the notice. The decision is final subject to judicial review after 10
14 days after the mailing or other delivery.

15 (4) If the Board of Appeals does not allow an appeal of a decision of a
16 hearing examiner:

17 (i) the decision of the hearing examiner is considered to be a
18 decision of the Board of Appeals;

19 (ii) the decision is subject to judicial review within the time and in
20 the manner provided for a final decision of the Board of Appeals; and

21 (iii) the time for appeal begins on the date of the notice of the order
22 of denial of the application for appeal to the Board of Appeals.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 June 1, 1998.