

CASE NO. **93337061**

*T-2691*  
*02 22-13-7*

In The Circuit Court for Baltimore City  
**CIVIL**

Part \_\_\_\_\_ of \_\_\_\_\_ Parts

102

113420

**In the Matter of**

STANLEY PAUL KINZIE  
VS.  
MD. DEPT. OF ECONO. & EMPLOY. DEV.

**STANLEY KINZIE**  
**Appellant**

\* **IN THE**  
\* **CIRCUIT COURT**

v.

\* **FOR**

**TOWSON STATE UNIVERSITY**  
**AND DEP'T OF ECON. & EMPLOY-**  
**MENT DEVELOPMENT**

\* **BALTIMORE CITY**

\* **CASE NO. 93337061/CL173470**

**Appellees**

\* \* \* \* \*

**MEMORANDUM**

Appellant Stanley Kinzie ("Appellant" or "Kinzie") filed an appeal from the decision of the Board of Appeals (the "Board") of the Department of Economic and Employment Development ("DEED"). Without a hearing, the Board summarily affirmed the decision of the Hearing Examiner. The Hearing Examiner had conducted a hearing, pursuant to Md. Lab. & Empl. Art. Code Ann. §§ 8-509, 8-806 (1991 & Supp. 1993),<sup>1</sup> and determined that Appellant was not entitled to unemployment benefits under § 8-909.

**Factual Background**

Kinzie is a part-time faculty member at Towson State University ("Towson"); he teaches introductory philosophy. For each semester of employment, the parties execute a new contract. Kinzie had worked on this basis for four full semesters before he claimed unemployment benefits: from August 10, 1991 through December 31, 1991 ("Fall 1991"); from January 25, 1992 through May 31, 1992 ("Spring 1992"); from September 8, 1992 through December 22, 1992 ("Fall 1992"); and from January 27, 1993 through May 22,

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<sup>1</sup>Unless otherwise indicated, all statutory references are to Md. Lab. & Empl. Art. Code Ann. (1991 & Supp. 1993).

1993 ("Spring 1993"). R.24, 49, 50.<sup>2</sup> Kinzie had applied for a contract to teach during the Summer of 1993, but Towson did not offer him one. R.35.

The parties agree that Kinzie's Spring 1993 contract ended on May 22, 1993. R.43, 49. After the expiration on May 22, 1993 of the contract for Spring 1993, Kinzie applied for unemployment benefits from DEED. A DEED Claims Examiner denied Kinzie benefits under § 8-909(a)(3) on the grounds that he had a reasonable assurance that he would return to work in the fall. R.5-6, 23. The Claims Examiner also found that Kinzie was not entitled to have received payment for the week of May 16-22, 1993, and assessed an overpayment. R.6, 29-31. Kinzie appealed these findings, and on September 13, 1993, a DEED Hearing Examiner conducted a full evidentiary hearing. R.21-49.

At the hearing, David Curtis ("Curtis"), Towson's Benefits Manager, testified that during Spring 1993, Towson had approached Kinzie to ask about his availability to teach in the fall semester, beginning on September 7, 1993 ("Fall 1993"), and indicated that Towson would like Kinzie to return to teach that semester. R.25-26, 48. Kinzie himself testified that Towson had done so. R.27, 33. Curtis further testified that Towson had planned for Kinzie's return in Fall 1993 (R.37-38), and although no one had a copy of the Fall 1993 course guide, Kinzie acknowledged that his name "may have been" published in it. R.36. Kinzie received a formal offer for Fall 1993 in a letter dated August 5, 1993. R.33, 47.<sup>3</sup>

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<sup>2</sup>The record of the hearing before the Hearing Examiner has been sequentially numbered. Therefore, references to the record shall be abbreviated as "R." followed by the page of the transcript.

<sup>3</sup>Although not relevant here, Kinzie ultimately signed contracts for the Fall 1993 and Spring 1994 terms. R.25.

In an opinion dated September 15, 1993, the Hearing Examiner decided in favor of Towson, finding that Kinzie had received reasonable assurances of future employment even though he did not receive his contract until August of 1993. R.51. The Examiner refused to consider the issue of overpayment at the hearing, claiming it was not before him. R.31-32. Nevertheless, without further comment in the opinion, the Examiner affirmed the decision of the Claims Examiner, effectively deciding the issue. R.51. Kinzie then filed a petition for judicial review with the Circuit Court.

#### Scope of Review

The scope of review of a decision of the Board is statutorily governed by § 8-512(d), which provides in pertinent part:

In a judicial proceeding [concerning a claim for benefits], findings of fact of the Board of Appeals are conclusive and the jurisdiction of the court is confined to questions of law if: (1) findings of fact are supported by evidence that is competent, material, and substantial in view of the entire record; and (2) there is no fraud.

See also, Bd. of Educ. v. Paynter, 303 Md. 22 (1985); MEMCO v. Md. Empl. Sec. Admin., 280 Md. 536 (1977); Bethlehem Steel Co. v. Bd. of Appeals, 219 Md. 146 (1959); Bd. of Appeals v. Baltimore, 72 Md. App. 427-431-2 (1987); Adams v. Cambridge Wire Cloth Co., 68 Md. App. 666, 673 (1986).

Section 8-512(d), and case law interpreting it, make clear that "findings of fact made by the Board are binding upon the reviewing court, if supported by substantial evidence in the record." Baltimore, 72 Md. App. at 431. See also, Allen v. Core Target City Youth

Program, 275 Md. 69 (1975). The resolution of conflicting evidence is the province of the agency, and "where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inference." Baltimore Lutheran High School Ass'n, Inc. v. Md. Empl. Security Admin., 302 Md. 649, 663 (1985). On review, this court may only determine "if, from the facts and permissible inferences in the record before the court, reasoning minds could reach the same result." Id.

Decisions of administrative agencies are prima facie correct. On appeal, the agency's decision must be viewed in the light most favorable to the agency. Paynter, 303 Md. at 35-36. Accordingly, "the reviewing court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken." Id. (emphasis in original).

#### Discussion

The principal issue before this court is whether there is substantial evidence to support the Hearing Examiner's finding that Kinzie had reasonable assurance of re-employment under § 8-909(b)(1)(ii), even before he received the contract for the Fall 1993 term. Section 8-909(b) states, in pertinent part, as follows:

- (b) (1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on those services for any week of unemployment that begins during:
  - (i) a period between 2 successive academic terms or years; [or]
  - (ii) a similar period between 2 regular but not successive terms. . . .
- (2) This subsection applies only to any individual who:
  - (i) performs the services in an instructional, research, or principal administrative capacity in the first of 2 academic years or terms; and

(ii) has a contract or reasonable assurance that the individual will perform the services in an instructional, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms.

The determination of reasonable assurance is an inherently fact-specific issue within the particular expertise of the Board. The evidence in the record, viewed in the light most favorable to DEED, would permit reasoning minds to reach the conclusion of reasonable assurance.

No Maryland case has analyzed the term "reasonable assurance," but cases from other states interpreting similar language cast some light on the factors relevant to the present analysis. In Bd. of Educ. v. Unempl. Comp. Bd. of Rev., 609 A.2d 596 (Pa. Commw. 1992), the Commonwealth Court of Pennsylvania noted that a reasonable assurance does not constitute a guarantee of employment, and further observed:

The existence of a reasonable assurance of employment for the succeeding academic year must be determined from the coalescence of relevant factors including whether the claimant has a history of reemployment with an educational institution, whether an educational institution has offered to place or has actually placed claimant's name on an employee list for the next academic year and has communicated its offer or its action to claimant, and whether claimant is likely to be called as an employee in the following academic year.

Id. at 599. See also, Armstrong Sch. Dist. v. Unemp. Comp. Bd. of Rev., 596 A.2d 1250, 1252 (Pa. Commw. 1991) (also relevant is whether the claimant intends to do the prospective work), appeal denied, 605 A.2d 334 (Pa. 1992). In Grand Rapids Public Schools v. Falkenstern, 425 N.W.2d 128 (Mich. App. 1988), the dire financial situation of the schools and the precipitous drop in enrollment were deemed relevant to whether a letter from the

(ii) has a contract or reasonable assurance that the individual will perform the services in an instructional, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms.

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Id. at 599. See also, Armstrong Sch. Dist. v. Unemp. Comp. Bd. of Rev., 596 A.2d 1250, 1252 (Pa. Commw. 1991) (also relevant is whether the claimant intends to do the prospective work), appeal denied, 605 A.2d 334 (Pa. 1992). In Grand Rapids Public Schools v. Falkenstern, 425 N.W.2d 128 (Mich. App. 1988), the dire financial situation of the schools and the precipitous drop in enrollment were deemed relevant to whether a letter from the

schools announcing anticipated openings sent to previously discharged teachers constituted "reasonable assurance."<sup>4</sup>

In the present case, Kinzie had been employed by Towson for four semesters, two spring and two fall. Towson had approached Kinzie in the spring of 1993 and expressed an interest in having Kinzie return. Towson apparently published Kinzie's name in the Fall 1993 course guide. In his Petition appealing the decision of the Hearing Examiner, Kinzie stated that before he received his contract in August of 1993, he had prepared to teach that fall by ordering textbooks. Kinzie Petition, at 3, ¶ 14. Finally, even though the risk of budget cuts and declining enrollment may have been information available to the parties and to the Board, there is no evidence of those conditions in the record sufficient to overcome the statutory presumption that the decision of the Hearing Examiner is prima facie correct.

Given reasonable assurance, it follows that Kinzie is not entitled to benefits, partial or full.<sup>5</sup> Section 8-909, by its own terms, is a limitation on the eligibility of certain employees of educational institutions, and Kinzie, as a part-time member of the faculty, is undeniably governed by it. During the 1992-1993 school year, Kinzie qualified for partial benefits under § 8-803(d) and was not disqualified by § 8-909. Once the school year ended and

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<sup>4</sup>In Falkenstern, the Michigan court affirmed the Board's decision to award benefits on the grounds that merely sending a letter announcing anticipated openings is not necessarily a reasonable assurance because the Board is entitled to consider "information available to the school system and the circumstances which existed at the time." Id. at 132.

<sup>5</sup>According to the testimony and argument before this court, the parties indicated that Kinzie had been receiving partial unemployment benefits until the end of the 1992-1993 school year. Because the court was not sure why Kinzie might be eligible for partial benefits during the school year but totally ineligible during the summer, the parties submitted supplemental briefs on this topic at the court's request.

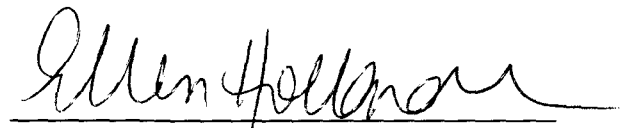


Kinzie no longer worked, § 8-803(d) no longer applied and he ceased to qualify for partial benefits. Had Kinzie's employment not been governed by § 8-909(a)(2), he might have qualified for full benefits; because the section controls, however, it specifically disqualifies him.

In so doing, the statute gives Kinzie nothing more than those benefits to which a full-time member of the faculty would be entitled. See, e.g., Berland v. Emp't Security Dep't, 760 P.2d 959, 963 (Wash. App. 1988) (Although substitute teachers do not have the financial security of full-time staff, the unemployment of either group during a summer term "is not the type of unpredictable layoff that unemployment benefits are designed to redress. Though this result may seem unfair to some . . . this was a decision for the Legislature to make . . . and make it the Legislature did when the law was enacted."); Leissring v. Dep't of Industry, Labor & Human Resources, 340 N.W.2d 533 (Wis. 1983) (legislative history of federal counterpart indicates that the intent of the disqualification was to prevent subsidized summer vacations for teachers with a reasonable assurance of returning in the fall); see also, Goralski v. Unemp't Compensation Bd. of Rev., 408 A.2d 1178 (Pa. Commw. 1979); Davis v. Dep't of Emp't Svces., 481 A.2d 128 (D.C.App. 1984); Bd. of Educ. v. Unemp't Ins. Appeals Bd., 206 Cal. Rptr. 788, 795 (Cal. App. 1984); Slominski v. Emp't Div., 711 P.2d 215 (Or. App. 1985); Indianapolis Pub. Sch. v. Rev. Bd., 487 N.E.2d 1343 (Ind. App. 1986).

At the hearing before this court, the Board conceded that Kinzie was indeed working the week of May 16-22, 1993. Consequently, the Board conceded that the Claims Examiner should not have assessed the overpayment and the Hearing Examiner should not have affirmed this decision. Thus, the findings below to the contrary are not supported by substantial evidence.

Based on the foregoing, it is, this 29<sup>th</sup> day of June, 1994, by the Circuit Court for Baltimore City, ORDERED that the decision of the Board as to reasonable assurance be, and the same hereby is, AFFIRMED. It is further ORDERED that the decision of the Board as to payment of benefits during the week of May 16-22, 1993, be, and the same hereby is, REVERSED. Costs to be paid by Appellant.

  
\_\_\_\_\_  
Judge Ellen L. Hollander

C cc: Mr. Stanley Kinzie  
Rachael K. Nunn, Assistant Attorney General

CIRCUIT COURT FOR BALTIMORE CITY

PRESIDING JUDGE

*Ellen L. Halland*

COURTROOM CLERK

*LOUISE BAYLOR*

STENOGRAPHER

*JOHN TROWBRIDGE*

*COURTROOM CLERKS*

*AND/OR*

*J. O. Hollander -*

ASSIGNMENT FOR:

CASE NUMBER -

*93337061 / CL 1734*

CASE TITLE -

*KINZIE VS MD. DEPT*

CATEGORY -

*FAST TRACK*

PROCEEDING -

*ADMIN APPEAL*

*WHERE IS THE ORDER?*

*Man Mover*

DEFENSE ATTORNEY  
PLAINTIFF ATTORNEY

*Decision of the Board of Appeal  
Affirmed in Part*

*The order was loose, with the case file. I walked both over to you personally last Wed.*

*Bruce Goldstein,  
Law Clerk*

TYPE OF PROCEEDING:

( JURY)

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DISPOSITION: (CHECK ONE)

( SETTLED)

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( VERDICT)

( REMANDED)

( JUDGEMENT NISI)

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( ORDER/DECREE TO

( POSTPONED)

( MOTION GRANTED)

( SUB CURIA)

( MOTION DENIED)

JUDGE SIGNATURE

*Ellen Halland*

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED / /

PRESIDING JUDGE

*Ellen L. Hallander*

COURTROOM CLERK

*LOUISE BAYLOR*

STENOGRAPHER

*JOHN TROWBRIDGE*

ASSIGNMENT FOR:

CASE NUMBER - *93337061 / CL 173470*  
CASE TITLE - *KINZIE VS MD. DEPT ECON. + EMPLOY. DEV.*  
CATEGORY - *FAST TRACK*  
PROCEEDING - *ADMIN APPEAL*

DEFENSE ATTORNEY \_\_\_\_\_  
PLAINTIFF ATTORNEY \_\_\_\_\_

*Decision of the Board of Appeals Reversed in Part,  
Affirmed in Part*

TYPE OF PROCEEDING: ( \_\_\_ JURY ) (  NON-JURY ) ( \_\_\_ OTHER )

DISPOSITION: (CHECK ONE)

- ( \_\_\_ SETTLED ) ( \_\_\_ CANNOT SETTLE ) ( \_\_\_ NEXT COURT DATE )
- ( \_\_\_ VERDICT ) ( \_\_\_ REMANDED ) ( \_\_\_ NON PROS/DISMISSED )
- ( \_\_\_ JUDGEMENT NISI ) (  ORDER/DECREE SIGNED ) ( \_\_\_ OTHER )
- ( \_\_\_ JUDGEMENT ABSOLUTE ) ( \_\_\_ ORDER/DECREE TO BE SIGNED )
- ( \_\_\_ POSTPONED ) ( \_\_\_ MOTION GRANTED )
- ( \_\_\_ SUB CURIA ) ( \_\_\_ MOTION DENIED )

PLEASE EXPLAIN:

JUDGE SIGNATURE *Ellen Hallander*

DATE *6/29/94*

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED 1 1

PRESIDING JUDGE

Ellen L. Hallander Court Room

COURTROOM CLERK

LOUISE BAYLOR CLERK(S)

STENOGRAPHER

JOHN TROWBRIDGE AND/OR

ASSIGNMENT FOR:

J. D. Hollander

CASE NUMBER

- 93337061 / CL 173470 WHERE IS THE

CASE TITLE

- KINZIE VS MD. DEPT ECON. & EMPLOY. DEV.

CATEGORY

- FAST TRACK

PROCEEDING

- ADMIN APPEAL

Debra Nixon

DEFENSE ATTORNEY  
PLAINTIFF ATTORNEY

Decision of the Board of Appeals Reversed in Part,  
Affirmed in Part

TYPE OF PROCEEDING:

( \_\_\_ ) JURY

(  ) NON-JURY

( \_\_\_ ) OTHER

DISPOSITION: (CHECK ONE)

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( \_\_\_ ) NON PROS/DISMISSED

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PLEASE EXPLAIN:

( \_\_\_ ) JUDGEMENT ABSOLUTE

( \_\_\_ ) ORDER/DECREE TO BE SIGNED

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( \_\_\_ ) MOTION GRANTED

( \_\_\_ ) SUB CURIA

( \_\_\_ ) MOTION DENIED

JUDGE SIGNATURE

Ellen Hallander

DATE

6/29/94

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED 1 / 1

PRESIDING JUDGE

Ellen L. Hallander

COURTROOM CLERK

LOUISE BAYLOR

STENOGRAPHER

JOHN TROWBRIDGE

ASSIGNMENT FOR:

CASE NUMBER

93337061 / CL 173470

CASE TITLE

KINZIE VS MD. DEPT ECON. + EMPLOY. DEV.

CATEGORY

FAST TRACK

PROCEEDING

ADMIN APPEAL

DEFENSE ATTORNEY

PLAINTIFF ATTORNEY

Decision of the Board of Appeals Reversed in Part, Affirmed in Part

TYPE OF PROCEEDING:

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(  ) NON-JURY

( ) OTHER

DISPOSITION: (CHECK ONE)

( ) SETTLED

( ) CANNOT SETTLE

( ) NEXT COURT DATE

( ) VERDICT

( ) REMANDED

( ) NON PROS/DISMISSED

( ) JUDGEMENT NISI

(  ) ORDER/DECREE SIGNED

( ) OTHER

( ) JUDGEMENT ABSOLUTE

( ) ORDER/DECREE TO BE SIGNED

PLEASE EXPLAIN:

( ) POSTPONED

( ) MOTION GRANTED

( ) SUB CURIA

( ) MOTION DENIED

JUDGE SIGNATURE

Ellen Hallander

DATE

6/29/94

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED / /

PRESIDING JUDGE

Ellen Houser

COURTROOM CLERK

LOUISE BAYLOR

STENOGRAPHER

JOHN TROWBRIDGE

ASSIGNMENT FOR:

CASE NUMBER - 93337061 / CL 173470  
CASE TITLE - KINZIE VS MD. DEPT. OF H. & EMPLOY. DEV.  
CATEGORY - FAST TRACK  
PROCEEDING - ADMIN APPEAL

DEFENSE ATTORNEY  
PLAINTIFF ATTORNEY

Decision of the Board of Appeals Reversed in Part,  
Affirmed in Part

TYPE OF PROCEEDING: ( ) JURY (  ) NON-JURY ( ) OTHER

DISPOSITION: (CHECK ONE)

- ( ) SETTLED ( ) CANNOT SETTLE ( ) NEXT COURT DATE
- ( ) VERDICT ( ) REMANDED ( ) NON PRDS/DISMISSED
- ( ) JUDGEMENT NISI (  ) ORDER/DECREE SIGNED ( ) OTHER
- ( ) JUDGEMENT ABSOLUTE ( ) ORDER/DECREE TO BE SIGNED
- ( ) POSTPONED ( ) MOTION GRANTED
- ( ) SUB CURIA ( ) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE Ellen Houser

DATE 6/29/94

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

IN THE CIRCUIT COURT FOR BALTIMORE CITY

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CIVIL DIVISION

STANLEY PAUL KINZIE, Plaintiff

\*

\*

-against-

\*

CIVIL ACTION NO.

\*

93337061/CL173470

MARYLAND DEPARTMENT OF ECONOMIC &

\*

EMPLOYMENT DEVELOPMENT, Defendant.

\*

PLAINTIFF'S NOTE TO THE COURT AND TO THE  
STAFF ATTORNEY FOR THE BOARD OF APPEALS

I have found an error in my Plaintiff's Memorandum Answering the Supplemental Memorandum of the Board of Appeals. At 18-19 I report that, of sixty cases found by a Lexis search, "only the Pennsylvania cases and the Ohio case are relevant to between-term denials for educational employees". In fact, others of the sixty cases are about this, but only the Pennsylvania cases and the Ohio case are about a possible exception for persons already receiving partial unemployment benefits. I regret the error.

There are minor mistakes at 14, last line, where the first "course" should be "courses", and at 21, where the section number "6" should be "7".



Plaintiff's Note

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I should also report that further Lexis searches tend to confirm that all the authority on the Pennsylvania exception has been found. Each of the following searches was done in the COURTS file of the STATES library. They are arranged roughly in order of interest.

1. "teacher w/20 partial w/5 benefits w/50 unemployment" finds seven cases. One is Porter--the Ohio case making a Pennsylvania-style exception. The other six are cases in the Pennsylvania line --West Greene School District; Soliman; Hopewell Area School District v. Commonwealth of Pennsylvania Unemployment Compensation Board of Review, 508 A.2d 1082 (Pa.Cmwlth. 1987) (decided for teacher claimant following Haynes and later cases); Reskowski; Weirich; and Haynes.
2. "teacher w/20 partial w/5 compensation w/50 unemployment" finds three cases--all cases also found in search 1 (Porter, Soliman, and Reskowski).
3. "teacher w/20 partial w/5 insurance w/50 unemployment" finds no case.
4. "teacher w/20 partial w/5 unemployment w/5 insurance" finds no case.
5. "teacher w/20 partial w/5 unemployment w/5 benefits" finds four cases --Porter and three cases in the Pennsylvania line (West Greene School District, Soliman, and Weirich).
6. "educational w/5 employee w/20 partial w/5 benefits w/50 unemployment" finds one case--Reskowski.

Plaintiff's Note

7. "educational w/5 employee w/20 partial w/5 compensation w/50 unemployment" finds no case.
8. "educational w/5 employee w/20 partial w/5 insurance w/50 unemployment" finds no case.
9. "educational w/5 employee w/20 partial w/5 unemployment w/5 insurance" finds no case.
10. "partial w/1 unemployment w/1 benefits w/50 educational" finds two cases. One is Weirich. The other is a New Hampshire case on the question whether a private foods-service company with an educational contract is an educational institution. It does not pose the question posed by the Pennsylvania cases.
11. "partial w/1 unemployment w/20 educational" finds no case.
12. "partial w/1 unemployment w/1 benefits" finds sixty cases. Only Porter and cases in the Pennsylvania line pose the question of the Pennsylvania cases.
13. "between w/5 terms w/5 disqualification" finds six cases. None poses the question posed by the Pennsylvania cases.
14. "between w/5 terms w/5 denial" finds twenty-one cases. One is Leissring--the influential Wisconsin case which provides the legislative history behind the statutes governing educational employees. Another--Evans v. The Employment Security Department, 866 P.2d 687 (Wash.App. 1994), LEXIS 62--found that a summer term

Plaintiff's Note

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is itself an academic term and not an interim between years or terms. (Cf. my letter of August 12, 1993, Record of Appeal 9316986, at 10, ¶ 4; and my testimony, Record, at 28 ["there are two other issues"--referring to the letter], and at 41--alluding to the summer terms.) None poses the question posed by the Pennsylvania cases.

Respectfully submitted,

*S. P. Kinzie*

Stanley Paul Kinzie  
2909 Guilford Avenue  
Baltimore, Maryland 21218

CERTIFICATE OF SERVICE: I hereby certify that on this 3rd day of June, 1994 a copy of the foregoing Plaintiff's Note to the Court and to the Staff Attorney for the Board of Appeals was mailed, postage prepaid, to Ms. Rachel K. Nunn / Staff Attorney, DEED / 217 East Redwood Street, 11th Floor / Baltimore, Maryland 21202.

*S. P. Kinzie*

IN THE CIRCUIT COURT FOR BALTIMORE CITY

8UB  
RECEIVED FOR  
CIRCUIT COURT FOR  
BALTIMORE CITY  
MAY 31 PM 4:17  
CIVIL DIVISION

STANLEY PAUL KINZIE, Plaintiff

-against-

MARYLAND DEPARTMENT OF ECONOMIC &  
EMPLOYMENT DEVELOPMENT, Defendant.

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CIVIL ACTION NO.  
93337061/CL173470

PLAINTIFF'S MEMORANDUM ANSWERING THE SUPPLEMENTAL  
MEMORANDUM OF THE BOARD OF APPEALS

This memorandum responds to the May 13, 1994 Supplemental Memorandum ("SM") of the Board of Appeals ("BA"). I shall first review SM, and then provide an accurate statement of the case law regarding the statutory interpretation recognized in Pennsylvania. Next I shall make a positive argument that the statutory interpretation recognized in Pennsylvania should be recognized in Maryland as well. Finally I shall--very briefly--revisit the issue of reasonable assurance.

In reviewing SM, I shall seek to establish four claims. The first is the most straightforward: that SM misstates the language of the main governing

Plaintiff's Answer

statute.

Second, I shall argue that SM interprets COMAR 24.02.02.10 in an unnecessarily unsympathetic way, and in a way which misconceives the role of judicial review.

Third, I shall identify an argument in SM about incentives, and an argument about fairness. I shall argue that the argument about incentives is too general to succeed, and the argument about fairness too general and too perverse to succeed.

Fourth, I shall argue that SM conflates two exceptions to the 'reasonable assurance' disqualification provision. SM then urges that no exception should be found in this case by urging that the exception which is inapplicable to this case is indeed inapplicable. It is able to make this conflation only by systematically misstating the relevant case law.

1. The Statute.

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The main statute governing this case is Title 8, Section 909, of the Maryland Labor and Employment Article ("LE") of the Maryland Code. SM purports to quote this statute at 2 (under Arabic numeral 2), and again at 5 (in section B). But the language quoted does not occur in the current version of the statute.

The current statute was approved by the Governor on April 26, 1993. It was provided that the statute should "take effect from the date that it is enacted". (See attachment, pp. 1 and 3.) The current statute has thus been

in effect during each of the hearings on this matter, as well as during the summer 1993 period which the hearings have concerned.

LE 8-909 reads, in pertinent part:

(b) . . . . (1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on those services for any week of unemployment that begins during:

(i) a period between 2 successive academic years;

. . . .

(2) This subsection applies only to any individual who:

(i) performs the services in an instructional, research, or principal administrative capacity in the first of 2 academic years or terms; and

(ii) has a contract or reasonable assurance that the individual will perform the services in an instructional, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms.

Md. Code Ann., Labor and Employment Article, § 8-909 (1993).

The current version of the statute is not less favorable to the argument of BA than is the misidentified version. Sympathetically interpreted, BA wishes to rely on the language providing "[w]ith respect to services performed in an instructional, research, or principal administrative capacity for an

Plaintiff's Answer

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educational institution, benefits may not be paid based on those services . . ." (my emphasis). I respond to this reliance in section 3.

2. COMAR 24.02.02.10.

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SM argues, at 3, that COMAR 24.02.02.10 constrains the Court, so that it cannot hold that partial benefits (as opposed to full benefits or none) should have continued over the summer. I cannot be sure this is false, but three observations seem in order.

First, the quoted language of 24.02.02.10 (at SM, 3), if read literally, states a sufficient condition for partial benefits. The language does not state a necessary condition, though a necessary condition is what SM's argument requires. (It argues that only under these circumstances can partial benefits be awarded.)

I should note, as against this, that the quoted language is labelled "Definition" (COMAR 24.02.02.10, § A). This perhaps suggests that a sufficient and necessary condition was intended. On the other hand, it perhaps suggests only that the necessity of the condition was presumed--a sufficient condition for partial benefits was stated, and no other sufficient condition was envisioned. This fits with the later language noted in my next paragraph. In any case, the word "Definition" is an ill chosen word for what is really a statement of conditions of eligibility. Since it is ill chosen, it can lend only limited credibility to an inference about intent.

Second, 24.02.02.10, section F, subsection (3) provides "Partial benefits

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are payable until the maximum benefit amount is exhausted for the claimant's benefit year, provided all of the eligibility requirements of the Unemployment Insurance Law are met." The nature of the eligibility requirements of the Unemployment Insurance Law is precisely the question before the Court. If the Court determines that those requirements are met in this case, section F, subsection 3 would seem to permit, or authorize, the continued payment of partial benefits.

Third, 24.02.02.10 is an administrative regulation, adopted to give effect to the statute. The statute is the more fundamental law, and the Court's task is the interpretation of that fundamental law. It would be odd, and disturbing, if the Court were constrained in its ability to interpret the more fundamental law by the less fundamental administrative law giving it effect.

3. The Arguments about Incentives and about Fairness.

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At 7-8, SM argues that permitting part-time teachers to receive unemployment benefits over the summer would have a disincentive effect. This argument is too general to succeed.

What is at issue is the continuation of unemployment benefits for part-time teachers already 'unemployed' (even while working), under the law. SM does not argue that the continuation of benefits poses a distinctive incentive problem; it really argues only that the benefits, whenever received, do so. (The availability of benefits creates just as much of a disincentive to seek work at Hecht's during the school year as it does during the summer.)



An argument of that kind is an incentive argument against unemployment compensation. Given that unemployment compensation is sometimes to be awarded, such a general argument cannot provide a reason for declining to award it in these circumstances.

The disincentive argument is also unpersuasive for another reason: it ignores the safeguards against disincentives which the system of unemployment compensation provides. Claimants are required to look for suitable work, to accept such work if offered, and to report the search for work to the Department of Economic & Employment Development. Each of these requirements would be just as much in place during interim periods as during periods of academic employment. If they are adequate during the latter periods, why are they inadequate during the former? No distinction along these lines is adduced by SM, though its argument requires such a distinction.

SM also makes an argument about fairness. It emerges at two places. The first is in the contrast between part-time teachers and full-time teachers "who worked twice as hard and received nothing", at 7-8. The second is in the allusion to "the principle of 'like pay for like services'", at 11, quoting Board of Education v. Unemployment Insurance Appeals Board, 206 Cal. Rptr. 788, 795 (Cal.App. 1984).

The same observation about generality applies here: the argument about fairness is really an argument against unemployment compensation in general. It is thus unapt as a distinctive argument against unemployment compensation in this case.

In addition, the argument about fairness is perverse. SM is arguing that

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educational employees, alone of all employees, should lose unemployment compensation when they become less employed. Only by perversely ignoring the singling out of educational employees can that principle be defended in the name of fairness.

The California case is not really to the contrary: it is not about an argument that claimants who were already eligible for unemployment compensation should not lose that eligibility.

As noted in my section 1 (at 3-4), BA wishes to rely on the statutory language restricting the exclusion to benefits based on services in an educational institution. As far as I can tell, it is supposed to be the incentive and fairness arguments which give this reliance its point. The idea is, I take it, that the absence of an exception for persons who were already 'unemployed' makes sense, since after all those persons might have also found other employment, outside of academia--as incentives and fairness require.

If this argument presumes that other employment is always available, it is false in fact and it is an argument against unemployment compensation generally. It cannot motivate the singling out of educational employees. (In my own case, I sought work outside my field--and teaching is the field in which I sought and attained work. See the Record of Appeal 9316989, at 41.)

One way to put the question before the Court is this: is the statute, if read without an exception for persons already 'unemployed', so irrational as to do violence to the intention of the legislature? SM's argument about the restriction to benefits based on educational services is an attempt to show

that, even without the exception, the statute is not irrational. But that argument is false in fact, excessively general, and irresponsible to the singling out of technically unemployed educational employees. For these reasons, it cannot discharge its task of rationalizing an exception-free version of the statute.

4. The Exceptions to the 'Reasonable Assurance' Disqualification Provision.

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There are at least two exceptions which have been recognized by the courts. One, recognized chiefly in Pennsylvania, is an exception for persons who were already receiving partial benefits before an interim period between academic terms or years. The other, which is widely recognized, is an exception for interim periods which precede a lower (or more erratic) expected quantity of educational employment. I shall call the former 'the Pennsylvania exception' and the latter 'the quantity exception'.

SM attempts to represent the Pennsylvania exception as the quantity exception. It then argues that the quantity exception does not obtain in this case.

SM's conflation of the two exceptions proceeds, in outline, as follows. It first reports, accurately though somewhat thinly, the exception found in Board of Education, School District of Philadelphia v. Unemployment Compensation Board of Review, 609 A.2d 596 (Pa.Cmwlth. 1992). This is the Pennsylvania exception, and it is an exception which, if recognized in Maryland, would apply to this case.

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SM next observes, also accurately, that the exception of Board of Education derives from other cases. Two of these, which are named by SM, are Haynes v. Commonwealth Unemployment Compensation Board of Review, 442 A.2d 1232 (Pa.Cmwith. 1982), and Weirich v. Commonwealth Unemployment Compensation Board of Review, 496 A.2d 97 (Pa.Cmwith. 1985).

SM next misreports Haynes and Weirich, erroneously characterizing them as expressions of the quantity exception. SM, 8-9. (Haynes and Weirich do not make the quantity exception, and they could not make it, since that exception does not fit their facts.) Then SM adds other, non-Pennsylvania cases, which are in fact expressions of the quantity exception, and which it mistakenly analogizes to Haynes and Weirich. SM, 9-10.

Finally, SM concludes, on the basis of the misreported and misanalogized cases (and having apparently forgotten Board of Education itself), that I do not fall under the Pennsylvania exception--or, at least, that I do not fall under the exception of "these cases". SM, 10, full ¶.

In order fully to document SM's conflation--and thus the independent existence of the Pennsylvania exception--it will be necessary to review SM's account in some detail. I regret this expenditure of the Court's time, but point out that it is made necessary by the misleading account in SM. I begin with Board of Education.

In that case, the Pennsylvania court states both the exception and its lineage.

In a line of cases stemming from Weirich and Haynes, the commonwealth

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court has declared that, despite a claimant's having a reasonable assurance of reemployment . . . , a claimant is eligible for benefits corresponding to a summer vacation period between successive academic years or to a holiday period within an academic year as long as the claimant is already receiving unemployment compensation benefits before the occurrence of the school summer vacation or school holiday period.

Board of Education, at 603.

This is the principle stated by SM, accurately but thinly, at 8. ("[T]he court held that substitute teachers who were already receiving unemployment compensation prior to the summer break were eligible for unemployment benefits during the break, even though they had a reasonable assurance of a return to work in the fall.")

It is worth noting three things to fix and deepen our understanding of this principle. First, the principle is a principle turning on the receipt of partial benefits before an interim period. It is not a principle turning on an expected reduction in the quantity or steadiness of employment after the interim. The latter principle is not suggested anywhere in Board of Education.

Second, the principle does not appear to be restricted only to substitute teachers. (One fairly recent case in the Pennsylvania line involved a school cafeteria worker. Snow v. Commonwealth Unemployment Compensation Board of Review, 505 A.2d 383 [Pa.Cmwltth 1986]. It was decided for claimant on Haynes and Weirich grounds.)

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Third, the principle stated here is ascribed also to a line of cases including Haynes and Weirich--a line of cases decided by the Board of Education court. This makes SM's reading of Haynes and Weirich implausible, for it ascribes a quite different principle to those cases.

Turning to Haynes, we can see that the Pennsylvania court is correct about its reasoning in that case, and that SM is incorrect. (SM is also wrong in a smaller way: it says that Haynes is about "Thanksgiving and Christmas breaks", SM, 8. In fact, Haynes is about weeks ending "November 25 and December 2, 1978", Haynes, at 1232, and thus only about a "Thanksgiving holiday", Id., at 1233.)

SM claims that "The Pennsylvania Commonwealth Court . . . [found] that the Legislature did not intend to disqualify from benefits individuals who were suddenly laid off from full-time teaching jobs and forced to accept erratic substitute work." SM, 8, citing Haynes, at 1233. Apparently on the basis of this claim, SM would represent to this Court that Haynes is about an interim period immediately following such a reduction in income or status. (At p. 10, SM seeks to distinguish my case from Haynes on the ground that my case is not about an interim period of this kind.) But Haynes is not about this, as SM's own chronology makes clear. In Haynes there was first a higher income; then a lower income entitling Haynes to partial unemployment benefits; and then the interim period at issue. Haynes, 1232-1233; SM, 8. This chronology does correspond to that present in this case.

SM's claim about the meaning of Haynes must refer to this paragraph:

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The intent of the legislature in passing Section 402.1 was to eliminate the payment of benefits to school employees during the summer months and other regularly scheduled vacations, on the rationale that such employees are able to anticipate and prepare for these nonworking periods. The law thus recognizes that these employees are not truly unemployed or suffering from economic insecurity during scheduled recesses.

Haynes, at 1233.

But this paragraph is of course not the holding of Haynes--it in fact makes no mention of Haynes himself. It is the next paragraph which gives the reason why a disqualification provision with the rationale sketched does not fit Haynes:

The same cannot be said for the claimant in this case. He had been unemployed since August 1978, and his substitute teaching for 15 days in the fall semester of 1978 did not render him "employed," since Section 4(u) of the Act, 43 P.S. § 753(u), provides that "[a]n individual shall be deemed unemployed . . . (II) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate plus his partial credit." It is undisputed that claimant's remuneration was less than his weekly benefit rate plus his partial benefit credit.

Id., at 1233; court's interpolation and court's ellipsis.

That is the reason why Haynes won Haynes. The case thus does have the meaning which the Pennsylvania court has continued to ascribe to it, and not the meaning which SM ascribes. The present case is analogous.

Similar remarks apply to Weirich. Immediately after summarizing the facts of that case, SM glosses it as follows: "Although the reasoning sometimes varies, other jurisdictions that have addressed the issue agree that when a teacher's employment is reduced from full-time status in one year to part-time status in the next year, the teacher is not disqualified from receiving unemployment compensation during the intervening summer." SM, 9. But Weirich is not about such an intervening summer. SM's own chronology, although wrong in one or two particulars, does again make this clear. SM, 9, ¶ 1.

In Weirich, the summer of 1981 was the intervening summer between a period of full-time and part-time status. Weirich, at 97. The academic year of 1982-83 was a period during which the plaintiff qualified for partial benefits. Id., at 97-98. (SM erroneously identifies this period with the words "When school began in the fall". SM, 9. Those words would make the period begin in the fall of 1981, a time about which Weirich provides no information.) Certain weeks during the summer of 1983 were the period for which the court awarded continuing benefits. Id., at 97, 99. (SM, at 9, uses the phrase "When summer arrived" to locate this period. Combined with the earlier mistake, this phrase would put the period in the summer of 1982.) The decision was based--at least in substantial part--on the immediately prior eligibility for partial benefits. Id., at 99.



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I have had to write "at least in substantial part" because Weirich also takes note of an expected continuing eligibility for partial benefits after the summer interim period. Here is the court's account of the ground of the decision in Weirich:

The petitioner here had already been determined to be unemployed and was already receiving benefits prior to the break. It appears, moreover, that she would again be able to receive benefits upon its termination, but not during the break. She was, however, no less unemployed during the break than she had been, either before or afterwards. We believe, therefore, that it would be counter to the legislative intent of section 402.1 to permit the Board to suspend the payment of unemployment compensation benefits already awarded and being paid to an otherwise eligible claimant solely through the fortuitous occurrence, during the course of her unemployment, of a school's break between academic years.

Id., at 99; footnote numeral omitted.

The Court will observe that this is the Pennsylvania exception, not the quantity exception. However, it is an application of the Pennsylvania exception in which judicial notice is taken of the claimant's unimproved prospects for the future. If this is essential to the holding, Weirich is distinguishable from my case. My prospects for the semester following the summer were for two course at a salary of \$2000 per course. In the semester

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preceding the summer I had taught one course at a salary of \$1768. The \$4000 salary perhaps made me ineligible for unemployment compensation in the following semester.

On this point, I shall only urge briefly that the judicial notice seems inessential to the holding. The last quoted sentence seems to state the rule of the case (and it is the last sentence in the case reporting reasoning). It refers only to "benefits already awarded and being paid", and not to benefits still to be paid. In addition, the Weirich court takes itself to be applying the rule of Haynes. ("[W]e believe that Haynes provides the best guidance in resolving this matter." Weirich, at 99.) The question of future eligibility does not figure in the reasoning of Haynes--which is also itself still good law. Finally, the Pennsylvania court's later statements of the rule of Haynes and Weirich, while sometimes noticing the matter of future prospects, have continued to state as the rule a principle based only on the immediately prior receipt of benefits. (For examples of both, see Board of Education, at 603. The rule is in the paragraph spanning the left and right columns, the discussion of future prospects in the indented quotation in the right column.)

There are also other cases in the Pennsylvania line. These include, notably, Reskowski v. Commonwealth Unemployment Compensation Board of Review, 505 A.2d 380 (Pa.Cmwlt. 1986); Soliman v. Commonwealth Unemployment Compensation Board of Review, 531 A.2d 819 (Pa.Cmwlt. 1987); and West Greene School District v. Commonwealth Unemployment Board of Review, 535 A.2d 697 (Pa.Cmwlt. 1988).

Each of these makes clear that the cases are about the 'Pennsylvania

exception', and not about the quantity exception. See, especially, the very clear statement in Soliman of the 'distinguishing factor' on which the cases turn: "There was no indication in Foremsky [v. Commonwealth Unemployment Compensation Board of Review, 496 A.2d 865 (Pa.Cmwth. 1985)] that the claimant, prior to filing for benefits because of the holidays, was receiving unemployment compensation benefits, and, hence, was unemployed. We believe this to be the distinguishing factor." Soliman, at 820. Haynes is mentioned just before this remark, and Reskowski is quoted just after.

I conclude that the Pennsylvania exception does exist, and that it is an exception having to do with the prior receipt of unemployment benefits. It is an independent exception, not assimilable to the quantity exception.

After falsely assimilating the Pennsylvania exception to the quantity exception, SM cites eleven cases in order to trace out the contours of the quantity exception. SM, 9-11. Three cases (Kelly, Fort Wayne, and Abulhosn) are cited for the proposition that teachers moving from full-time to part-time positions can receive unemployment compensation for an intervening period between academic years or terms. Two cases (Williams and Milkowski) are cited for the contradictory proposition that even such teachers cannot receive compensation. (The contradictory proposition is anomalous. For the weight of authority in 1985, see the mentioned Kelly case--Kelly v. Employment Division, 701 P.2d 448, 450 [Or.App. 1985]. The fundamental case in this area is Leissring v. Department of Industry, Labor and Human Relations, 340 N.W.2d 533 [Wis. 1983]. A search of the citations of Leissring reveals that the majority view has not shifted.) Six cases (Goralski, Davis, Board of Education

[Cal.App.], Slominski, Indianapolis Public Schools, and Berland) are cited for the proposition that part-time teachers remaining as part-time teachers cannot receive compensation during interim periods.

None of the eleven cases involves an argument based on the receipt of partial benefits prior to a period between academic years or terms. Thus, none is directly relevant to the Pennsylvania exception.

Insofar as the eleven cases are indirectly relevant, they largely support the Pennsylvania exception. The eleven cases stand, in significant part, for the proposition that the various closely analogous statutes are meant to treat educational employees on a par with other employees. See Kelly, at 449: "[W]e rejected a literal reading of the disqualification in the light of the legislative intent to provide unemployed persons in the academic community with the same benefits as other unemployed persons." Cf. 450-451: "The policy of both [the Wisconsin and Oregon] state statutes is the same, to provide unemployment benefits for individuals in an academic institution on the same terms as any other eligible worker . . . ." Compare Fort Wayne, at 1383: "The question [is] whether Starbuck was unemployed or merely seeking a subsidized vacation." And compare even Milkowski (a case cited by SM as adverse to the quantity exception), at 649 (quoting Chicago Teachers Union Local No. 1, AFT/AFL/CIO v. Johnson, 421 F.Supp 1261, 1265 [N.D.Ill. 1976]): The congressional intent "is indicative of an assumption that teachers with contracts for the term prior to the summer hiatus and for the term following it are not in fact unemployed." It is the inequality of treatment, when that assumption breaks down, that the Pennsylvania exception is designed to address.

This tradition of interpretation in favor of equal treatment is rooted in the language and history of the state statutes. Here is the relevant language of the Maryland statute:

(a) In general.--Subject to the provisions of this section, benefits based on service in covered employment under §§8-208(a) and 8-212(c) of this title shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service in covered employment.

Md. Code Ann., Labor and Employment Article, § 8-909 (1993).

Leissring, esp. at 537-539, provides an account of the legislative history behind the state statutes--a history favoring the equal treatment of educational employees. Leissring is a very careful, scholarly, and influential opinion. Judging from its citation history, it is apparently universally approved of.

5. The Current Status of the Case Law Regarding the Pennsylvania Exception.

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A careful search for cases on the partial-benefits exception has revealed only the Pennsylvania cases and one Ohio case. I searched the COURTS file of the STATES library on Lexis--a file which includes case law from all states. The search was "partial w/1 benefits w/10 unemployment". This finds sixty cases, but only the Pennsylvania cases and the Ohio case are relevant to

between-term denials for educational employees.

I also Shepardized--again on Lexis, to pick up all reporters--five of the main cases in the Pennsylvania line. The cases were Haynes, 442 A.2d 1232; Weirich, 496 A.2d 97; Snow, 505 A.2d 383; Reskowski, 505 A.2d 380; and Board of Education, 609 A.2d 596. This search found only one citation of the Pennsylvania cases outside of Pennsylvania. The citation occurs in a Rhode Island case.

The Ohio case on the partial-benefits exception is In the Matter of the Claim of Porter, No. 374 (Ohio Ct.App., Pike County, March 5, 1985). In Porter, a teacher claimant was awarded partial benefits over a Christmas break when he had been receiving partial benefits before the Christmas break. The case differs from the Pennsylvania cases, however, in that the Christmas break was from one school and the partial benefits were based on another teaching job (since lost) at another school. A lower court had relied on that fact, and, in affirming, the appellate court may also have found the fact significant.

It is not clear, however, that there is a principled reason for distinguishing an exception for partial benefits based on work at another school from an exception for partial benefits based on work at the same school. The Maryland statute explicitly disavows this distinction as far as the disqualification itself is concerned: it is a matter of "a contract or reasonable assurance that the individual will perform the services in an educational, research, or principal administrative capacity for any educational institution in the second of the 2 academic years or terms". LE, §8-909(b)(2)(ii), emphasis supplied.

The Rhode Island citing case is Preziosi v. Department of Employment Security, Board of Review, 529 A.2d 133 (R.I. 1987). At 138, it cites Reskowski. The citation is approving, but Preziosi itself is distinguished: "Since both the [long-term substitute teachers] and the [long-term substitute teachers] in pool have received full salary and benefits for the academic year preceding the summer recess during which they attempt to collect unemployment compensation, they may reasonably plan for the upcoming period of unemployment." Id., at 138, immediately after the citation of Reskowski.

I conclude that the question of an exception founded on the prior receipt of partial benefits has arisen in only two states--Pennsylvania and Ohio. For this reason, the available authority is surprisingly meager. But the authority which does exist is unanimous in finding such an exception.

The Pennsylvania exception has been noticed in a third state--Rhode Island. The Rhode Island case was distinguished, but the citation to an exception-finding Pennsylvania case was approving.

Finally, there is the statutory language, the legislative history (as reported in Leissring), and the many cases making the quantity exception. These all favor reading the statute to require equality between educational employees and other employees. Such a reading also favors the Pennsylvania exception.

6. The Argument for the Pennsylvania Exception.

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The directly relevant authority is unanimous in favoring this exception.

It is also favored by the statutory language, legislative history, and the preponderance of the authority on the quantity exception. Arguments from fairness favor the exception when they are made at the appropriate level--a level comparing the treatment of educational employees and the treatment of others. For these reasons, I urge the Court to find that the exception recognized in Pennsylvania obtains in Maryland as well.

There is also the question of whether the exception should be construed to permit the award of full benefits for interim periods, or only the continuing award of partial benefits. The Ohio case awarded partial benefits. The Pennsylvania cases appear to award full benefits. (In Haynes, at 1234, the case was remanded for the computation of benefits. Under normal computation procedures--which the court did not reject--this would yield full benefits for the interim periods. The later cases do not seem to have departed from this outcome.)

I have no very strong opinion on this question, but I note that full benefits--when the claimant was already legally 'unemployed' before the interim--seem more in keeping with the goal of parity between educational employees and others.

6. The Question of a "Reasonable Assurance".

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In the first BA memorandum, at 6, the Pennsylvania Board of Education was the main case cited for its analysis of this notion. Board of Education also contains the Pennsylvania exception. BA now wishes, in effect (and without



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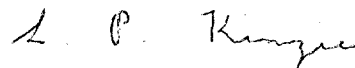
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argument), to retain the analysis while splitting off the exception. See SM, 6 n.1. That is self-serving, for obviously without the exception the analysis itself might have been different. (If the exception goes, the costs of relying on an assurance rise, and that might alter the analysis.)

The standard for a reasonable assurance announced in Leissring (and often followed) is "'a written, verbal, or implied agreement'". Leissring, at 538, quoting H.R.Rep. No. 1745, 94th Cong., 2d Sess. (1976). Was such an agreement present in my case--before the receipt of the August letter? Would I have breached an agreement if I had not returned? Would Towson State if it had not asked me to return?

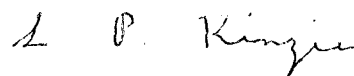
Did the Hearing Examiner follow any judicially informed standard at all in finding a reasonable assurance? I think he did not: I think his judicial method was ad hoc. According to the Record, at 26, Towson State has had to defend these cases "many times before". If that is true, judicial clarification of the notion might benefit both parties--not only claimants.

Respectfully submitted,



Stanley Paul Kinzie  
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Baltimore, Maryland 21218

CERTIFICATE OF SERVICE: I hereby certify that on this 31st day of May, 1994, a copy of the foregoing Plaintiff's Memorandum Answering the Supplemental Memorandum of the Board of Appeals, with attachment, was mailed, postage prepaid, to Ms. Rachel K. Nunn / Staff Attorney, DEED / 217 East Redwood Street, 11th Floor / Baltimore, Maryland 21202.



year; and <D>

[D> (ii) there is reasonable assurance that the individual will perform the covered employment in the 2nd term or year. <D>

[D> (2) Before July 1 of each year, each educational institution shall provide the Department with the name and social security number of each individual who has reasonable assurance of performing covered employment under paragraph (1) of this subsection in the next academic year. <D>

[D> (3) If an individual whose name and social security number are required to be submitted to the Department under paragraph (2) of this subsection is not given an opportunity to perform the covered employment for the educational institution for the next successive term or year, the individual shall be eligible for benefits retroactively, if the individual: <D>

[D> (i) files a timely claim for each week; <D>

[D> (ii) was denied benefits solely under this subsection; and <D>

[D> (iii) otherwise is eligible for benefits. <D>

[D> (c) An individual is not eligible for benefits based on covered employment described in subsections (a) or (b) of this section for any week of unemployment that begins during a customary and established holiday recess or vacation period if: <D>

[D> (1) the individual performed the covered employment in the period immediately before the recess or vacation; and <D>

[D> (2) there is a reasonable assurance that the individual will perform the covered employment immediately after the recess or vacation. <D>

[D> (d) An individual who is employed in any of the same capacities described in subsections (a) and (b) of this section by an educational service agency, a governmental entity that is established and operated exclusively to provide educational service to 1 or more educational institutions, shall be denied benefits in the same manner described in subsections (a) and (b) of this section. <D>

8-909.

[A> (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, BENEFITS BASED ON SERVICE IN COVERED EMPLOYMENT UNDER §§ 8-208(A) AND 8-212(C) OF THIS TITLE SHALL BE PAYABLE IN THE SAME AMOUNT, ON THE SAME TERMS, AND SUBJECT TO THE SAME CONDITIONS AS BENEFITS PAYABLE ON THE BASIS OF OTHER SERVICE IN COVERED EMPLOYMENT. <A>

[A> (B) (1) WITH RESPECT TO SERVICES PERFORMED IN AN INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE CAPACITY FOR AN EDUCATIONAL INSTITUTION, BENEFITS MAY NOT BE PAID BASED ON THOSE SERVICES FOR ANY WEEK OF UNEMPLOYMENT THAT BEGINS DURING: <A>

①

[A] (II) A SIMILAR PERIOD BETWEEN 2 REGULAR BUT NOT SUCCESSIVE TERMS; OR [A]

[A] (III) A PERIOD OF CONTRACTUALLY PROVIDED PAID SABBATICAL LEAVE. [A]

[A] (2) THIS SUBSECTION APPLIES ONLY TO ANY INDIVIDUAL WHO: [A]

[A] (I) PERFORMS THE SERVICES IN AN INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE CAPACITY IN THE FIRST OF 2 ACADEMIC YEARS OR TERMS; AND [A]

[A] (II) HAS A CONTRACT OR REASONABLE ASSURANCE THAT THE INDIVIDUAL WILL PERFORM THE SERVICES IN AN INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE CAPACITY FOR ANY EDUCATIONAL INSTITUTION IN THE SECOND OF THE 2 ACADEMIC YEARS OR TERMS. [A]

[A] (C) (1) WITH RESPECT TO SERVICES PERFORMED FOR AN EDUCATIONAL INSTITUTION IN ANY CAPACITY OTHER THAN INSTRUCTIONAL, RESEARCH OR PRINCIPAL ADMINISTRATIVE, BENEFITS MAY NOT BE PAID ON THE BASIS OF THE SERVICES FOR ANY WEEK OF UNEMPLOYMENT THAT BEGINS DURING A PERIOD BETWEEN 2 SUCCESSIVE ACADEMIC YEARS OR TERMS. [A]

[A] (2) THIS SUBSECTION APPLIES TO ANY INDIVIDUAL WHO: [A]

[A] (I) PERFORMS THE SERVICES DESCRIBED IN THIS SUBSECTION IN THE FIRST OF 2 ACADEMIC YEARS OR TERMS; AND [A]

[A] (II) HAS A REASONABLE ASSURANCE THAT THE INDIVIDUAL WILL PERFORM THE SERVICES IN THE SECOND OF THE 2 SUCCESSIVE ACADEMIC YEARS OR TERMS. [A]

[A] (3) BEFORE JULY 1 OF EACH YEAR, EACH EDUCATIONAL INSTITUTION SHALL PROVIDE THE DEPARTMENT WITH THE NAME AND SOCIAL SECURITY NUMBER OF EACH INDIVIDUAL WHO HAS A REASONABLE ASSURANCE OF PERFORMING COVERED EMPLOYMENT DESCRIBED UNDER THIS SUBSECTION IN THE NEXT ACADEMIC YEAR. [A]

[A] (4) IF AN INDIVIDUAL WHOSE NAME AND SOCIAL SECURITY NUMBER ARE REQUIRED TO BE SUBMITTED TO THE DEPARTMENT UNDER PARAGRAPH (3) OF THIS SUBSECTION IS NOT GIVEN AN OPPORTUNITY TO PERFORM THE SERVICES FOR THE EDUCATIONAL INSTITUTION FOR THE NEXT SUCCESSIVE YEAR OR TERM, THE INDIVIDUAL SHALL BE ELIGIBLE FOR BENEFITS PROACTIVELY IF THE INDIVIDUAL: [A]

[A] (I) FILES A TIMELY CLAIM FOR EACH WEEK; [A]

[A] (II) WAS DENIED BENEFITS SOLELY UNDER THIS SUBSECTION; AND [A]

[A] (III) IS OTHERWISE ELIGIBLE FOR BENEFITS. [A]

[A] (D) (1) WITH RESPECT TO SERVICES DESCRIBED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, AN INDIVIDUAL MAY NOT BE ELIGIBLE FOR BENEFITS BASED ON THE SERVICES FOR ANY WEEK THAT BEGINS DURING AN ESTABLISHED AND CUSTOMARY VACATION PERIOD OR HOLIDAY RECESS. [A]

[A] (2) THIS SUBSECTION APPLIES TO ANY INDIVIDUAL WHO: [A]

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PERIOD OR HOLIDAY RECESS; AND <A>

[A> (II) HAS A REASONABLE ASSURANCE THAT THE INDIVIDUAL WILL PERFORM THE SERVICES IN THE PERIOD IMMEDIATELY FOLLOWING THE VACATION PERIOD OR HOLIDAY RECESS. <A]

[A> (E) (1) IN THIS SUBSECTION, "EDUCATIONAL SERVICE AGENCY" MEANS A GOVERNMENTAL ENTITY THAT IS ESTABLISHED AND OPERATED EXCLUSIVELY TO PROVIDE EDUCATIONAL SERVICE TO ONE OR MORE EDUCATIONAL INSTITUTIONS. <A]

[A> (2) IF ANY SERVICE DESCRIBED IN SUBSECTION (B) OR (C) OF THIS SECTION IS PERFORMED BY AN INDIVIDUAL IN AN EDUCATIONAL INSTITUTION WHILE IN THE EMPLOY OF AN EDUCATIONAL SERVICE AGENCY, THE INDIVIDUAL IS SUBJECT TO SUBSECTIONS (B), (C), AND (D) OF THIS SECTION AND BENEFITS MAY NOT BE PAID IF NOT ALLOWED UNDER SUBSECTION (B), (C), OR (D) OF THIS SECTION. <A]

[A> (F) IF ANY SERVICE DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS PROVIDED BY AN INDIVIDUAL TO OR ON BEHALF OF AN EDUCATIONAL INSTITUTION, THE INDIVIDUAL IS SUBJECT TO SUBSECTIONS (B), (C), AND (D) OF THIS SECTION AND BENEFITS MAY NOT BE PAID IF NOT ALLOWED UNDER SUBSECTION (B), (C), AND (D) OF THIS SECTION. <A]

[\*4] SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall apply to the computation date of July 1, 1995 and shall apply to the rate of contribution for each employing unit for the calendar year 1996.

[\*5] SECTION 5. AND BE IT FURTHER ENACTED, That Section 12 of Chapter 534 of the Acts of the General Assembly of 1992 shall be applicable to all claims with an effective date on or after January 3, 1993 and to claims that are reopened after subsequent employment with an effective date on or after January 3, 1993. This provision shall take effect retroactive to January 1, 1993.

[\*6] SECTION 6. AND BE IT FURTHER ENACTED, That §§ 8-1104(a), (b), and (c) and 8-1108 of the Labor and Employment Article are suspended for weeks of unemployment beginning after March 6, 1993 and shall not be reinstated until January 1, 1995 or until the date that the provisions of Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1980 are reinstated.

[\*7] SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health and safety, has been passed by a yea and naye vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date that it is enacted.

HISTORY:

Approved by the Governor April 26, 1993  
Introduced and read first time: February 22, 1993  
Assigned to: Economic Matters  
Committee Report: Favorable  
House action: Adopted  
Read second time: March 16, 1993

3

(7)  
AS

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CIRCUIT COURT FOR  
BALTIMORE CITY  
MAY 16 A 8:12  
CIVIL DIVISION

STANLEY P. KINZIE

Appellant

v.

TOWSON STATE UNIVERSITY 360224

and

BOARD OF APPEALS,  
Department of Economic and  
Employment Development

Appellees

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* #93337061/CL173470

\* \* \* \* \*

SUPPLEMENTAL MEMORANDUM IN SUPPORT  
OF THE BOARD OF APPEALS

The Board of Appeals, (the "Board"), Department of Economic and Employment Development, ("DEED"), files this Supplemental Memorandum in Support of its decision that Stanley P. Kinzie, (the "Claimant"), was ineligible for unemployment compensation.

I. Introduction

Claimant was employed from August, 1991, through the fall of 1993 as a part-time faculty member at Towson State University. During the fall and spring semesters of 1992-93, Claimant received partial unemployment benefits because his weekly wages were less than his weekly benefit amount of \$223.00. During the summer of 1993, however, the Agency determined that Claimant was not entitled to benefits, pursuant to the Labor and Employment Article [hereinafter "LE"] §8-909, because he had a reasonable assurance that he would return to teach in the fall of 1993.

On May 2, 1994, this Court heard argument on the reasonable assurance issue. The Court had not been aware that Claimant received partial benefits

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during the fall and spring semesters of 1992-93, and questioned whether or not Claimant could receive partial benefits during the summer as well.

That question is the subject of this Supplemental Memorandum, which argues as follows:

1. Claimant was only eligible for partial benefits during weeks in which he actually performed services for wages. During the summer of 1993, Claimant performed no services and, therefore, was not eligible for partial benefits. Rather, Claimant was either eligible for full benefits or ineligible for any benefits.
2. Claimant was ineligible for benefits during the summer of 1993 due to LE §8-909, which states that, during a summer recess between academic terms, an "individual may not be paid benefits based on covered employment performed for an educational institution". Pursuant to this statute, Claimant could not receive unemployment compensation during the summer based on the wages he earned from teaching. Because Claimant's only wages during the relevant time period were from teaching, those wages could not form the basis for granting benefits and Claimant was, therefore, ineligible for benefits.

II. Partial unemployment benefits were not available to Claimant during the summer of 1993 because he performed no services for wages.

To be eligible for unemployment compensation, a claimant must first be "unemployed". LE §8-801 defines "unemployed" as follows:

(b) Individuals considered to be unemployed. -- An individual is considered to be unemployed in any week during which the individual :

- (1) does not perform work for which wages are payable; or
- (2) performs less than full-time work for which wages payable are less than the weekly benefit amount that would be assigned to the individual plus allowances for dependents.

Thus, an individual with a part-time job is "unemployed" if the weekly wages he receives are less than his weekly unemployment benefit amount.

In the present case, Claimant was "unemployed" during the fall and spring semesters of 1992-93 because his weekly wages at Towson State were less than his weekly benefit amount of \$223.00. However, because Claimant received some wages, he was not eligible for his full weekly benefit amount of \$223.00. Rather, he was eligible for "partial" benefits, the difference between his weekly benefit amount and his weekly wage.

Partial benefits are computed by "determining the claimant's weekly benefit amount . . . and subtracting any wages exceeding \$35 payable to the claimant for the week." LE §8-803(d). COMAR 24.02.02.10 states that "[a] claimant shall be eligible for partial benefits for any week in which the claimant: (1) Performed services for wages; (2) Earned less in gross wages than the claimant's weekly benefit amount; and (3) Meets all of the requirements set forth in the Unemployment Insurance Law." Clearly, partial benefits are based on partial work. If a claimant performs no services in a particular week, then the claimant receives either full benefits, if eligible, or no benefits if he falls within one of the disqualifying provisions of the Unemployment Insurance Law.

Because Claimant performed no services during the summer of 1993, he was not eligible for partial benefits. Thus, the issue to be decided is whether he was eligible for full benefits or whether, as the Board found, he was ineligible because he fell within the disqualifying provision of §8-909.

III. Claimant was ineligible for unemployment insurance benefits pursuant to LE §8-909 because his wages from Towson State could not provide the basis for granting benefits during the summer recess, as long as Claimant had a reasonable assurance that he would return to teach in the fall.

A. Claimant's monetary eligibility for benefits was determined according to the amount of wages earned "during the base period".

This section provides some background that is necessary to an understanding of why, ultimately, Claimant was ineligible for unemployment benefits in the summer of 1993.

In addition to being "unemployed" within the meaning of LE 8-801, an unemployment insurance claimant must also be monetarily eligible for benefits. For instance, an individual who has never held a job is clearly "unemployed" pursuant to §8-801, but cannot receive unemployment insurance benefits because the individual has earned no wages upon which to base the benefits. The Unemployment Insurance Fund does, indeed, work very much like insurance -- if a claimant earns a threshold amount in wages during a period of employment called the "base period", the claimant may be entitled to benefits if he loses his job. The amount of benefits to which a claimant is entitled each week, (the "weekly benefit amount"), is calculated according to the wages earned during the claimant's "base period". See 8-803. The "base period" is "the first 4 of the last 5 completed calendar quarters immediately preceding the start of the benefit year." LE §8-101(b). "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31. LE §8-101(g).

In the present case, Claimant established a benefit year beginning June 28, 1992. Thus, Claimant's base period was the entire year of 1991, as explained by the following chart:

April -- to -- June 30, 1992:	Claimant applied for benefits during, but before the completion of, this calendar quarter. Thus, this quarter
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is not within Claimant's base period.

January -- to -- March 31, 1992

October - to - December 31, 1991

July -- to -- September 30, 1991

April -- to -- June 30, 1991

January -- to -- March 31, 1991: Last 5 calendar quarters immediately preceding the start of Claimant's benefit year. The first 4 of these quarters, (all of 1991), make up Claimant's base period.

A claimant's weekly benefit amount is based on the claimant's "high quarter wages" -- i.e., the calendar quarter in the base period for which the claimant's wages are highest. See LE §8-802. LE §8-803 contains a chart that determines the weekly benefit amount corresponding to the claimant's high quarter wage amount. In the case at bar, Claimant earned \$1206.80 in the first quarter from two separate employers (not including Towson State), no wages in the second or third quarters, and \$7072.00 from Towson State alone in the fourth quarter (see "Exhibit A", attached). Claimant's weekly benefit amount of \$223.00 was based on the \$7072.00 earned in the fourth quarter of Claimant's base period because this was Claimant's high quarter wage amount. See LE §8-803.

B. Claimant's high quarter wages earned from teaching at Towson State could not form the basis for summer unemployment compensation and, therefore, Claimant was ineligible for benefits because he had no other wages during this quarter upon which benefits could be based.

LE §8-909 states that between two academic terms, "[a]n individual may not be paid benefits based on covered employment performed for an educational institution" if the individual works in an instructional capacity, performed the covered employment in the first term, and has a reasonable

assurance of returning to work in the second term.<sup>1</sup> Thus, wages earned from teaching cannot form the basis for payment of unemployment insurance benefits during summer breaks. See Garrison v. Department of Economic Sec., 750 P.2d 1370, 1372 (Ariz. 1988)(when a claimant's eligibility for unemployment benefits relies in whole or in part on service in an educational institution, "that reliance carries with it the baggage of ineligibility . . . during the summer weeks between school years.").

In the case at bar, Claimant had two non-teaching jobs in the first quarter of his base period, no job in the second and third quarters, and one teaching job at Towson State in the fourth quarter. (See "Exhibit A", attached). Claimant's weekly benefit amount was based on his high quarter wages earned teaching at Towson State in the fourth quarter. See LE §§8-802 and 8-803. LE §8-909 mandates that no benefits be paid during a summer recess based on employment as a teacher. Thus, during the summer of 1993, Claimant could not be paid benefits based on wages earned from services performed for Towson State. See LE 8-909. Because Claimant had no other high quarter wages upon which benefits could be paid, he was ineligible for benefits.<sup>2</sup>

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<sup>1</sup>This Supplemental Memorandum assumes, without discussion, that Claimant had a reasonable assurance of his return to Towson State in the fall of 1993.

<sup>2</sup>Nor could Claimant receive benefits based on wages earned from his non-teaching employment in the first quarter of 1991. Claimant's weekly benefit amount was calculated based on his high quarter wages in accordance with LE §§8-802 and 8-803. There is no provision in the law for calculating a new weekly benefit amount, based on lower wages, simply because Claimant is a part-time teacher whose wages from teaching cannot form the basis for benefits. Nor would it be equitable to calculate a new weekly benefit amount based on Claimant's non-teaching wages. Claimant received partial benefits throughout the 1992-93 academic year because the difference between his weekly benefit amount, (calculated on high quarter wages), and his weekly

(Footnote Continued)

LE §8-909 was enacted to conform to the Federal Unemployment Tax Act, 26 U.S.C. §3304(a)(6)(A), and the language of both statutes is substantially the same. The legislative history of the federal provision indicates that "the intent . . . [was] to prevent subsidized summer vacations for those teachers who are employed during one academic year and who are reasonably assured of resuming their employment the following year." Leissring v. Department of Industry, Labor and Human Resources, 340 N.W.2d 533 (Wis. 1983).

The federal law and LE §8-909's disqualification from benefits applies to part-time teachers as well as full-time teachers. While this may seem harsh at first glance, it makes sense upon further reflection. As an example, consider full-time teacher A and part-time teacher B. Teacher A's sole employment and source of wages is from teaching. Pursuant to LE §8-909, teacher A's wages cannot form the basis for unemployment benefits during the summer. Teacher B only teaches part-time and, therefore, also has a part-time job at the Hecht Company. During the summer, teacher B may continue to work at Hecht's and receive partial benefits if his weekly wages from Hecht's are less than his weekly benefit amount. If he loses his job at Hecht's, he may receive unemployment benefits based on the services performed for Hecht's. If, however, teacher B did not have this part-time job at Hecht's and received wages only from teaching part-time, he would not be eligible for benefits pursuant to LE §8-909. This is a reasonable outcome because, if part-time teachers were allowed partial benefits during the year and summer benefits, then they would have no incentive to search for another job -- they

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(Footnote Continued)

salary was great enough to merit partial benefits. Thus, he has received the advantage of having his weekly benefit amount calculated according to his high quarter wages -- he cannot now receive additional benefits by calculating a new weekly benefit amount based on low quarter wages.

could just continue to receive benefits while their full-time counterparts worked twice as hard and received nothing during the summer recess.

Pennsylvania has carved out an exception to the statutory disqualification of teachers from receiving benefits in between academic terms. In Board of Education v. Unemployment Compensation Bd. of Review, 609 A.2d 596 (Pa. Commw. 1992), the court held that substitute teachers who were already receiving unemployment compensation prior to the summer break were eligible for unemployment benefits during the break, even though they had a reasonable assurance of a return to work in the fall. The court based its conclusion on its prior decisions in Haynes v. Unemployment Compensation Bd. of Review, 442 A.2d 1232 (Pa. Commw. 1982), and Weirich v. Unemployment Compensation Bd. of Review, 496 A.2d 97 (Pa. Commw. 1985).

In Haynes, the claimant had been employed as a full-time teacher when he was laid off at the end of the 1977-78 school year. 442 A.2d at 1232. In August, 1978, the claimant applied for and received unemployment benefits. Id. at 1233. During the 1978-79 school year, the claimant worked intermittently as a per diem substitute teacher and continued to receive partial benefits. Id. In the fall semester of 1978, the claimant worked only 15 days. Id. During the Thanksgiving and Christmas breaks in 1978, however, the Board denied benefits based on Pennsylvania's version of LE §8-909, currently codified as 43 PA. STAT. ANN. §802.1.

The Pennsylvania Commonwealth Court reversed, finding that the Legislature did not intend to disqualify from benefits individuals who were suddenly laid off from full-time teaching jobs and forced to accept erratic substitute work. Id. at 1233. Such individuals were not able to prepare for the non-working summer period as were their regularly employed counterparts. Id.

Similarly, in Weirich, the claimant had been employed as a full-time teacher until May, 1981, when she was suspended due to declining enrollment. 496 A.2d at 97. When school began in the fall, the claimant accepted employment as a per diem substitute teacher and received partial benefits. Id. at 97-98. When summer arrived, the Board found her ineligible for benefits based on Pennsylvania's statute. Id. at 98. The court reversed, adopting its reasoning in Haynes. Id.

Although the reasoning sometimes varies, other jurisdictions that have addressed the issue agree that when a teacher's employment is reduced from full-time status in one year to part-time status in the next year, the teacher is not disqualified from receiving unemployment compensation during the intervening summer. See, e.g., Kelly v. Employment Div., 701 P.2d 448 (Or. App. 1985)(law school instructor who was full-time in 1983-84 academic year, but only part-time in 1984-85 academic year was eligible for unemployment compensation in the intervening summer), review denied, 707 P.2d 583 (Or. 1986); Fort Wayne Community Schools v. Review Bd., 428 N.E. 2d 1379 (Ind. App. 1982)(full-time teacher who was laid off and placed on substitute list for subsequent year was entitled to unemployment compensation during intervening summer); Abulhosn v. Employment Security Dep't of Washington, 722 P.2d 1306, 1308 (Wash. 1986)("There is a fundamental difference between a full-time teacher's being placed on a substitute teacher's list and a substitute teacher's being rehired as a substitute. This difference requires that full-time teachers receive unemployment compensation for that one summer between their full-time and part-time work); but see Williams v. City School Dist., 439 N.Y.S. 2d 503 (App. Div. 1981)(full-time teachers who were placed on substitute lists when their positions were abolished were not entitled to benefits because they had reasonable assurance of continued

employment in an instructional capacity); Milkowski v. Department of Labor, 402 N.E. 2d 646, 649 (Ill. App. 1980)(full-time teacher whose position subsequently changed to a day-to-day substitute teacher was ineligible for unemployment compensation because "the situation envisioned by Congress [in enacting 26 U.S.C. §3304(a)(6)(A) was a teacher who is 'totally out of work and desperately looking for [a] job in a market overloaded with professional educators'")(citing Hearings on HR 5899, Subcommittee on Unemployment Compensation of the Committee on Ways and Means, 94th Cong., 1st Sess. 194 (1975)).

These cases are inapplicable to the case at bar because they are factually distinguishable. In the present case, Claimant was not employed full-time in the 1992-93 academic year. His salary was \$1768.00 in both the fall and spring terms of 1992-93 (R.49). In the fall of 1993, his approved salary was to be \$4000.00 (R.48). Thus, Claimant, unlike the teachers in Haynes, Weirich, Kelly, Fort Wayne, and Abulhosn, was earning at least the same salary, if not more, in the fall of 1993 as he did in the fall and spring of 1992.<sup>3</sup> Claimant was also performing the same, part-time work in the fall of 1993 that he had performed in the preceding academic year. As a result, Claimant does not fall within the exception announced in these cases. Rather, his situation is more appropriately compared to that of part-time substitute teachers.

Teachers who are employed as part-time substitutes in one academic year and have reasonable assurance of employment as substitutes in the subsequent

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<sup>3</sup>Claimant's salary did decrease from the 1991-92 academic year to 1992-93. However, Claimant received benefits for the intervening summer of 1992 (see "Exhibit B", attached).

year are not entitled to unemployment compensation during the intervening summer. See, e.g., Goralski v. Unemployment Compensation Bd. of Review, 408 A.2d 1178 (Pa. Commw. 1979)(substitute teacher who had reasonable assurance of continued employment as substitute was not eligible for benefits); Davis v. Department of Employment Servs., 481 A.2d 128 (D.C. App. 1984)(statute disqualifying teachers from summer benefits applies to part-time substitutes despite the indefinite nature of their employment); Board of Educ. v. Unemployment Insurance Appeals Bd., 206 Cal. Rptr. 788, 795 (Cal. App. 1984)(it would be a violation of the principle of "like pay for like services" if substitute teachers were eligible for benefits during the summer while full-time teachers were not); Slominski v. Employment Div., 711 P.2d 215 (Or. App. 1985)(substitute teaching in both year preceding and year succeeding summer recess will disqualify teacher from unemployment compensation, despite uncertainty as to quantity of work); Indianapolis Public Schools v. Review Bd., 487 N.E.2d 1343, 1345 (Ind. App. 1986)(substitute teacher whose income was reduced from \$35 per day to \$30 per day was ineligible for unemployment compensation because the "character of his employment from one academic term to the next will essentially remain the same"); Berland v. Employment Security Dep't, 760 P.2d 959, 963 (Wash. App. 1988)(While substitute teachers do not have the financial security of full-time teachers, their unemployment during a summer recess "is not the type of unpredictable layoff that unemployment benefits are designed to redress. Though this result may seem unfair to some, . . . this was a decision for the Legislature to make . . . , and make it the Legislature did when the law was enacted.").

Because Claimant's employment preceding and following the summer of 1993 was of the same essential character, albeit part-time, Claimant was not

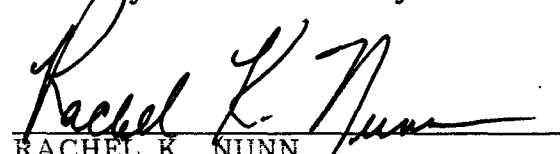
exempted from LE §8-909's disqualification from unemployment compensation. Thus, Claimant was subject to the statute's mandate that no summer benefits be paid based on employment performed for an educational institution. Claimant's eligibility for summer benefits, therefore, would have to be based on employment other than Claimant's employment at Towson State. All of Claimant's high quarter wages, however, were earned teaching at Towson State. Pursuant to §8-909, these wages could not form the basis for summer benefits and, having no other high quarter wages upon which to base benefits, Claimant was ineligible for benefits during the summer of 1993.

IV. Conclusion

Based upon the foregoing and the record as a whole, it is respectfully requested that the decision of the Board of Appeals be affirmed.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
RACHEL K. NUNN  
Staff Attorney  
217 E. Redwood Street, 11th Floor  
Baltimore, Maryland 21202  
(410) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 1994, a copy of the foregoing Supplemental Memorandum in Support of the Board of Appeals was mailed, postage prepared, to Stanley P. Kinzie, 2909 Guilford Avenue, Baltimore, Maryland 21218.

  
RACHEL K. NUNN



MABS

PSEUDO MONETARY DETERMINATION

G03

SSN: 449 96 3501

NAME CHECK:

BENEFIT YEAR BEG. QTR.: 922

EMPLOYER	NAME	911 <sup>+</sup> UC	912 <sup>•</sup> UC	913 <sup>★</sup> UC	914 <sup>Δ</sup> UC	TOTAL
065810689	TOWSON STA	0.00	0.00	0.00	7072.00	7072.00
080071787	EDP TEMPS	1056.00 24	0.00	0.00	0.00 24	1056.00
080099290	MARYLAND C	150.80 24	0.00	0.00	0.00 24	150.80

TOTALS:            1206.80                            .00                            .00                            7072.00

WBA:            223.00    MBA:            5798.00    HIGH QUARTER:            7072.00    TOTAL WAGE:            8278.80  
 NAME DOES NOT MATCH

TRANSACTION:

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To	Rachel Nunn	From
Co.	DEED	Co.
Dept.	AG	Phone #
Fax #	333-8228	Fax #

- + "911" means "First quarter", 1991 (Jan. - March)
- "912" means "Second quarter", 1991 (April - June)
- ★ "913" means "Third quarter", 1991 (July - Sept.)
- Δ "914" means "Fourth quarter", 1991 (Oct. - Dec.)

EXHIBIT A

) 09/05/92 01 09/16/92 226001187 09/16/92 5583723 01 223 00 00 223  
 ) 08/29/92 01 08/02/92 22460381 08/04/92 5518426 01 223 00 00 223  
 ) 08/22/92 01 08/02/92 22460381 08/02/92 5511324 01 223 00 00 223  
 ) 08/15/92 01 08/18/92 223110903 08/18/92 5408222 01 223 00 00 223

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TRANSACTION:

ABR 04/07/94 B E N E F I T P A Y M E N T H I S T O R Y 203

3N: 449 96 3501 0 NAME: STANLEY P KINZIE BYE: 06/28/92

BA: 223 BALANCE: 2843 LOCAL-OFFICE: 1

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0	07/18/92	01	07/22/92	220400993	07/22/92	5256557					01	223	00	00	223
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EXHIBIT B

DATE DOCKET ENTRIES NO.

5-2-94 Case submitted to the Court for determination without the aid of a jury. (Hollander, J)

5-2-94 Arguments heard in open court, supplemental briefs to be submitted.

5-2-94 Case held Sub Curia. (Hollander, J)

PRESIDING JUDGE Ellen S. Hollander

COURTROOM CLERK Louise C. Taylor

STENOGRAPHER John Trowbridge

ASSIGNMENT FOR MONDAY MAY 02, 1994

CASE NUMBER - 93337061

CASE TITLE - KINZIE VS. MD DEPT OF ECON. & EMP. DEV. CL173470

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

PROCEEDING - COURT TRIAL - FAST TRACK

WEISKITTEL, LYNN  
KINZIE, STANLEY PAUL

DEFENSE ATTORNEY  
PLAINTIFF

333-4813

*Arguments heard; supplemental briefs to be submitted.*

TYPE OF PROCEEDING: (\_\_\_) JURY (  ) NON-JURY (\_\_\_) OTHER

DISPOSITION (CHECK ONE)

- (\_\_\_) SETTLED (\_\_\_) CANNOT SETTLE (\_\_\_) NEXT COURT DATE
- (\_\_\_) VERDICT (\_\_\_) REMANDED (\_\_\_) NON PROS/DISMISSED
- (\_\_\_) JUDGEMENT NISI (\_\_\_) ORDER/DECREE SIGNED (\_\_\_) OTHER
- (\_\_\_) JUDGEMENT ABSOLUTE (\_\_\_) ORDER/DECREE TO BE SIGNED
- (  ) POSTPONED (\_\_\_) MOTION GRANTED
- (  ) SUB CURIA (\_\_\_) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE Ellen Hollander DATE 5/2/94

CIRCUIT COURT FOR BALTIMORE CITY  
MSV523 CASE INQUIRY

DATE: 04/26/94  
TIME: 10:36  
TERMINAL: C136

CASE NUMBER: 93337061 KINZIE VS.MD DEPT OF ECON.& EMP. DEV. CL173470  
CATEGORY: APPAA  
ORIG COURT: CL AMOUNT OF SUIT :\$ LAST PLEA DATE : 04/13/94  
DATE FILED: 12/03/93 TRANSCRIPT PAGES : 26 TERMINATION DATE: 04/13/95  
STATUS: A CONSOLIDATED CASE: BOOK NUMBER :  
STATUS CODE: 12/20/93 PROTRACTED: PAGE NUMBER :  
WHO PAYS COSTS : WAIV  
LAST MODIFIED ON: 04/14/94

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
05/02/94	CAL	09:30		219W	CTF					
12/03/93	FILE									
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01/27/94	PLEA									
02/02/94	ANSW									
02/08/94										

NEXT PAGE P/N PAGE: 001  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94  
MSV523 CASE INQUIRY TIME: 10:36  
CASE NUMBER: 93337061 KINZIE VS.MD DEPT OF ECON.& EMP. DEV. CL173470

03/10/94 MEMO PLTFF'S MEMORANDUM REQUIRED BY MD RULE 7-207. (5)  
04/13/94 PLEA MEMORANDUM IN SUPPORT OF THE BOARD OF APPEALS FD. (6)  
05/02/94 PPSN SUMMONS SENT TO PARTIES REPRESENTED AS PROPER PERSON  
CONN NAME  
DEF \*MARYLAND DEPARTMENT OF ECONOMIC EMPLOYMENT IDENT T10898  
1100 N. EUTAW STREET  
BALTIMORE MD 21201  
ADF WEISKITTEL, LYNN IDENT 911960  
217 E. REDWOOD STREET PHONE 410 333-4813  
ROOM 1101 -- 11TH FLOOR  
BALTIMORE MD 21202  
PLA KINZIE, STANLEY PAUL IDENT L38492 PROPER PERSON  
2909 GUILFORD AVENUE 410  
BALTIMORE MD 21218

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CIRCUIT COURT FOR  
BALTIMORE CITY

1994 APR 13 A 7:34

STANLEY P. KINZIE	*	IN THE
Appellant,	*	CIRCUIT COURT CIVIL DIVISION
v.	*	FOR
TOWSON STATE UNIVERSITY 360224*	*	BALTIMORE CITY
and	*	#93337061/CL173470
BOARD OF APPEALS,	*	
DEPARTMENT OF ECONOMIC	*	
AND EMPLOYMENT DEVELOPMENT,	*	
Appellees.	*	

\* \* \* \* \*

MEMORANDUM IN SUPPORT OF THE BOARD OF APPEALS

I. Introduction

The Board of Appeals, (the "Board"), Department of Economic and Employment Development, ("DEED"), an Appellee herein, files this Memorandum in support of its decision.

Pursuant to the Maryland Labor and Employment Article §8-909, the Hearing Examiner found that Stanley P. Kinzie, (the "Claimant"), a faculty member at Towson State University, was not entitled to unemployment insurance benefits for the period between the spring and fall semesters of 1993 because he had reasonable assurance, in the spring of 1993, that he would return to work in the fall of 1993.<sup>1</sup>

<sup>1</sup>Unless otherwise indicated, all statutory references are to Title 8 of the Labor and Employment Article of the Maryland Annotated Code.

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Claimant appealed that decision to the Board, which denied review.<sup>2</sup> Claimant subsequently appealed to this Court.

The factual findings made by the Hearing Examiner are supported by substantial evidence in the administrative record, and the Hearing Examiner made no errors of law. Therefore, the Hearing Examiner's decision should be affirmed.

## II. Scope of Review

Judicial review of the administrative adjudication of unemployment insurance appeals is governed by §8-512. The appeal is from the Board's decision and not from a finding on some part of the evidence. Brown v. Maryland Unemployment Compensation Bd., 189 Md. 233, 55 A.2d 696 (1947).

Findings of fact made by the Board are binding upon this Court if there is substantial evidence in the record to support them. Section 8-512(d); Board of Educ. v. Paynter, 303 Md. 22, 491 A.2d 1186 (1985). This Court may only determine if reasoning minds could reach the same conclusion from the facts and permissible inferences in the record before the Board. Baltimore Lutheran High School Association, Inc. v. Employment Security Administration, 302 Md. 649, 490 A.2d 701 (1985); Ramsay Scarlett & Co., Inc. v. Comptroller of the Treasury, 302 Md. 825, 490 A.2d 1296 (1985). If the Board's conclusion could be reached by reasoning minds, this Court has no power to reject it, even

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<sup>2</sup>When the Board denies review, the decision of the Hearing Examiner is considered to be that of the Board. Section 8-806(h)(4)(i).

if the Court would conclude differently after its review of the record. Paynter, 303 Md. at 35, 491 A.2d at 1193; Baltimore Lutheran, 302 Md. at 662, 490 A.2d at 707. Reviewing courts should be reluctant to second guess administrators in areas "especially within the expertise of the administrative officials administering the unemployment insurance law . . .". Barley v. Dep't of Employment Sec. 242 Md. 102, 106, 218 A.2d 24, 27 (1966).

Because the administrative findings in this case are supported by substantial evidence in the administrative record and the legal conclusion is reasonable, the Hearing Examiner's decision should be affirmed.

### III. Statement of Facts

Claimant was employed as a contractual faculty member with Towson State University, (the "Employer"), beginning in August, 1991 (R.24). His contract was renewed several times, and his exact dates of employment were as follows: fall semester, 1991 (August 10, 1991, through December 31, 1991); spring semester, 1992 (January 25, 1992, through May 31, 1992); fall semester, 1992 (September 8, 1992, through December 22, 1992); spring semester, 1993 (January 27, 1993, through May 22, 1993) (R.24,49).

At the end of the spring semester, 1993, Claimant applied for unemployment insurance benefits. After an initial investigation, a DEED Claims Examiner determined that Claimant was not entitled to benefits pursuant to §8-909, because his unemployment began between two regular academic terms, and he had a contract or reasonable assurance that he would return to work in the fall term (R.5). Claimant appealed



the determination (R.10), and a full evidentiary hearing was conducted by a DEED Hearing Examiner on September 13, 1993 (R.21-49). At that time, Claimant had resumed employment with Towson State for the fall semester, 1993. (R.25).

At the hearing, the Employer testified that in the spring of 1993, the Employer consulted with Claimant regarding his availability for the fall and indicated that it would like Claimant to return in the fall (R.25-26,48). Claimant admitted that the Employer had asked him whether he was interested in returning to work in the fall of 1993, and that the Employer told him that it would like him to return in the fall (R.27,33). Claimant testified that his name "may have been" published in the Employer's fall schedule book (R.36). The Employer testified that it began planning in April, 1993, for Claimant's return to work in the fall (R.36-37,48). On August 5, 1993, Claimant was formally offered a position for the fall semester, 1993 (R.47).

The Hearing Examiner affirmed the decision of the Claims Examiner, finding that Claimant had reasonable assurance that he would be returning to work in the fall, 1993. (R.50-52). Claimant appealed (R.53), and the Board denied review (R.55). Subsequently, Claimant filed a timely appeal to this Court.

IV. The Hearing Examiner's decision that Claimant had reasonable assurance that he would return for work in the fall semester of 1993 is supported by substantial evidence in the administrative record and is correct as a matter of law.

Pursuant to §8-909, the Hearing Examiner determined that Claimant was ineligible for unemployment insurance benefits during the period between the spring and fall semesters of 1993. Section 8-909 provides,

in pertinent part:

(a) Employees in instructional, research, or principal administrative capacities. -- An individual may not be paid benefits based on covered employment performed for an educational institution . . . in an instructional, principal administrative, or research capacity for any week of unemployment that begins: . . .

(2) during the period between 2 successive academic terms or years; [or]

(3) if provided for in an agreement, during a period between 2 regular but not successive academic terms if:

(i) the individual performs the covered employment in the 1st term; and

(ii) there is a contract or reasonable assurance that the individual will work in an instructional, principal administrative, or research capacity for an educational institution in the 2nd term.

In the present case, it is undisputed that Claimant was employed during the spring semester of 1993. Thus, the first prong of §8-909(a)(3) is clearly satisfied. The only issue before this Court is whether there is substantial evidence in the record to support the Hearing Examiner's determination that the second prong of the statute, regarding reasonable assurance of continuing work, is also satisfied.

Whether or not an individual has received a "reasonable" assurance of continuing employment is a factual, employment-related issue that is within the particular expertise of the Board. Section 8-512(d), which limits this Court's scope of review of the Board's decision, indicates that reviewing courts should defer to the Agency's findings as long as they are reasonable and supported by substantial evidence. The reviewing court, honoring the expertise of the Agency, must review the Board's determination in the light most favorable to the Agency, and the decision of the Board must be left undisturbed in the absence of an

error of law. Baltimore Lutheran High School Assoc. v. Employment Sec. Admin., 302 Md. 649, 663-64, 490 A.2d 701, 708 (1985).

Although no Maryland court has passed on the question, the Commonwealth Court of Pennsylvania has held that "a reasonable assurance under [Pennsylvania's statute<sup>3</sup>] does not constitute an absolute guarantee of employment in the second academic year." Board of Educ. of Philadelphia v. Unemployment Compensation Bd. of Review, 609 A.2d 596, 599 (Pa. Commw. 1992), appeal denied, 622 A.2d 1378 (Pa. 1993). Rather, the existence of a reasonable assurance of employment for the succeeding academic year "must be determined from the coalescence of relevant factors," including whether a claimant has a history of reemployment with the institution, whether the institution has offered to place the claimant's name on an employee list for the next academic year, and whether claimant is likely to be called as an employee in the following academic year. Id. See also Armstrong School District v. Unemployment Compensation Bd. of Review, 596 A.2d 1250, 1252 (Pa. Commw. 1991)(relevant factors in determining whether "reasonable assurance" exists include employment history and, if the

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<sup>3</sup>Section 402.1(1) of Pennsylvania's Unemployment Compensation Law disqualifies a claimant from receiving benefits for a school summer vacation period between academic years when the claimant has been employed in an instructional, research or principal administrative capacity for an educational institution and, for the period following the vacation, has a "reasonable assurance" that he will perform services in any capacity. Board of Educ. of Philadelphia v. Unemployment Compensation Bd. of Review, 609 A.2d 596, 598 (Pa. Commw. 1992), appeal denied, 622 A.2d 1378 (Pa. 1993).

institution intends to offer the work, whether the claimant intends to do the work), appeal denied, 605 A.2d 334 (Pa. 1992).

In the present case, Claimant was repeatedly reemployed for new terms (R.49). In the spring of 1993, the Employer told Claimant that it wanted him to return and teach in the fall, and the Employer inquired as to Claimant's availability for the fall (R.25-26, 27,33). Claimant's name was published in the fall semester schedule book, and the Employer made all the necessary arrangements for Claimant's return in the fall (R.36-37,48). The only contingency was that enrollment in Claimant's courses be adequate (R.26) -- clearly, enrollment had been sufficient for two years, which made it likely that this would be the case in the fall of 1993. It is a reasonable inference that a general, introductory course such as Claimant taught, (Introduction to Philosophy - R.48), would most likely draw the necessary enrollment to merit offering the course. Indeed, this turned out to be the case, as Claimant was actually hired back for the fall of 1993.<sup>4</sup>

Claimant argues that "[t]he University could have provided an earlier explicit assurance [than the contract he received in August, 1993]. This need not have been a contract, but might only have been an assurance that, if things continued as they were, I would return." Claimant's Petition at 4, paragraph 17. Claimant's argument fails for two reasons. First, the legal standard is reasonable assurance, not

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<sup>4</sup>In his Petition, Claimant stated that he had heard "considerable news of budgetary difficulty". Petition at 3, paragraph 15. There is no evidence in the record to support this.

explicit assurance. Second, the record clearly shows that the Employer did offer reasonable assurance that, if the status quo was maintained, Claimant would be back in the fall.

The case that claimant cites to support his argument that he had no reasonable assurance of being rehired in the fall of 1993, Grand Rapids Public Schools v. Falkenstern, 425 N.W.2d 128 (Mich. App. 1988), is easily distinguishable from the present case on its facts. The Grand Rapids Public School System laid off approximately 625 teachers in March of 1981, in anticipation of severely strained resources. Id. at 129-30. The economic situation worsened further after the layoff -- during the summer of 1981, federal assistance was reduced by 1.5 million dollars; the school system cut its own budget by 12 to 13 million dollars; and there had been a steady, three-year decline in student enrollment. Id. at 130. Nevertheless, in June, 1981, the school system sent letters to 266 teachers stating that "it is anticipated that you will be offered a teacher position for the 1981-82 school year." Id. No explanation was given for this "new-found optimism". Id.

The Court of Appeals of Michigan agreed with the unemployment insurance Board of Review that the letter sent to teachers in June, 1981, did not constitute a "reasonable" assurance that they would teach during the 1981-82 school year:

To determine whether the assurance was reasonable, the [Board] must necessarily consider the information upon which it was based. The [Board] is not required to accept on blind faith any assurance given by a school district to one of its employees. If this were so, the school district could unilaterally render [the statute] meaningless and frustrate the underlying purpose of the Michigan Employment Security Act.

Id. at 132.

In the present case, there is no evidence that Towson State University was suffering drastic monetary problems, or that student enrollment had been declining for years. More importantly, however, the Grand Rapids claimants had actually been laid off before receiving the June, 1981 letter, which did not explain whether or how the dire economic situation had improved. Far from being laid off, Claimant was told by the Employer that it wanted him to return in the fall. The Employer inquired as to Claimant's availability and published his name in the fall semester schedule book. Claimant's contract had already been renewed three times previously. The Hearing Examiner's decision that these facts constituted reasonable assurance of continuing work is clearly one that reasoning minds could make.

This Court must affirm the Hearing Examiner's determination if it is reasonable and supported by substantial evidence. As long as the decision is reasonable, it is irrelevant that the evidence may also support the opposite, although equally reasonable, conclusion. Because there is substantial evidence in the record to support the Hearing Examiner's conclusion that Claimant had reasonable assurance of re-hire, we request that the Court affirm this portion of the Hearing Examiner's determination.

V. The overpayment issue must be remanded.

The Board agrees with Claimant that, pursuant to §8-909, he should not be denied the unemployment benefits that he received for the week beginning May 16, 1993. Rather, his period of disqualification commenced with the week beginning May 22, 1993.

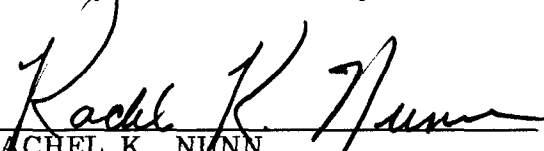
Thus, the case must be remanded to the Board so that it may correct the calculation of the overpayment of benefits to Claimant.

VI. Conclusion

Wherefore, for the foregoing reasons, the Board requests that this honorable Court affirm in part and remand in part.

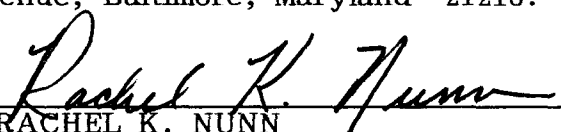
Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
RACHEL K. NUNN  
Staff Attorney  
217 E. Redwood Street, 11th Floor  
Baltimore, Maryland 21202  
(410) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> day of April, 1994, a copy of the foregoing Memorandum in Support of the Board of Appeals was mailed, postage prepaid, to Stanley P. Kinzie, 2909 Guilford Avenue, Baltimore, Maryland 21218.

  
RACHEL K. NUNN

IN THE CIRCUIT COURT FOR BALTIMORE CITY

5 P.R. RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
94 MAR 10 PM 4:22  
CIVIL DIVISION

STANLEY PAUL KINZIE, Plaintiff

-against-

MARYLAND DEPARTMENT OF ECONOMIC &  
EMPLOYMENT DEVELOPMENT, Defendant.

CIVIL ACTION NO.  
93337061/CL173470

PLAINTIFF'S MEMORANDUM REQUIRED BY MARYLAND RULE 7-207

1. This memorandum will state the material facts of the case, the questions presented for review, and the relevant arguments and authority. The arguments and authority will be presented in the discussions of the questions. Since these matters were also addressed in the Petition for Review, I will state them here partly by reference to that Petition.

2. At the conclusion of the memorandum, a possible correction to the Petition for Review will be stated, and a possible correction to the Record Before the Department of Economic and Employment Development Appeal No. 9316986.

The Facts.

3. I was a contractual faculty member at Towson State University in the Spring Semester of 1993, and again in the Fall Semester of 1993. Towson State University is located at Towson, Maryland 21204. The Spring Semester lasts from January until May, and the Fall Semester lasts from September until December.

4. I was employed under separate contracts during each of these semesters. The first contract ended on May 22, 1993, and I worked on that day. The second contract was mailed (according to the postmark) on August 10, 1993, and received by me on August 12th. It was accompanied by a letter offering the teaching position. Before the contract and letter arrived, I received no spoken or written assurance that I would teach in the Fall 1993 Semester.

5. The absence of spoken or written assurance occurred against a background of explicit warnings about budget and enrollment. That background is reported in my Petition, ¶ 15.

6. I applied for partial unemployment compensation for the week ending May 22, 1993, reporting my work and earnings during that week. The claim was paid, but it was later disallowed as an



overpayment. I also applied for unemployment compensation for the weeks following May 22nd. I continued to file until the week ending August 14th, during which my new contract arrived. Some of these claims were paid, but they were later disallowed as overpayments. The others were not paid.

7. All of the disallowed claims--both the alleged overpayments, and those which were unpaid--were initially disallowed on the ground that I had a contract providing for my return to work in the Fall 1993 Semester. Notice to Appeals Division of Lower Appeal (Record, at 5). That ground is mistaken, and I appealed the determination. On September 13, 1993 a hearing was held before a Hearing Examiner. In his decision of September 15, 1993, the claims were disallowed on the ground that I had had a "reasonable assurance," §8-909(b)(2)(ii), of returning to work in the Fall of 1993.

8. The Hearing Examiner located the alleged reasonable assurance in "past practices." Decision of September 15, 1993, at 2 (Record, at 51). The Examiner's only specification of the practices is this: ". . . the claimant, in 1992 and 1993, had returned to work at the end of the summer breaks." Id. As noted in my Petition, this ground is also mistaken--at least because I had returned to work after a summer break only in 1992. Petition, ¶ 19. Benefits were denied for each contested week, including that ending May 22, 1993. Decision, at 2 (Record, at 51).

9. I sought to appeal the Hearing Examiner's decision to the Board of Appeals of the Department of Economic and Employment Development. This request was denied. Decision No. 1272-DR-93 (Record, at 55).

The First Question.

10. The first question is whether the Hearing Examiner's decision regarding the week ending May 22, 1993 was proper. I discuss this in my Petition, ¶¶ 4-9.

11. Under §8.909(b)(1)(i), benefits are to be denied if a reasonable assurance of returning to work is possessed during an interim "period between 2 successive academic years." The week ending May 22, 1993 did not fall in such an interim period, since it fell within the Spring 1993 Semester.

12. The Hearing Examiner asserted that the question of the dates was not before him. Indeed, after an attempt to raise the matter of the dates, the Examiner claimed that the alleged overpayments in general were not before him. Record, at 31-32. See also the

Record, at 42, where the Examiner says "The payment dates are not before me."

13. After the assertion at 42 some testimony about the dates was permitted. It is at best quite unclear, however, whether the Examiner understood the testimony as relevant to an issue that was before him. The employer's testimony, at 43, the employer's exhibit (no. 2; in the Record, at 49), and the claimant's testimony, at 43, are in agreement that the week ending May 22, 1993 was part of the contractual period for the Spring 1993 Semester. No conflicting testimony or exhibit was offered.

14. In my Petition, I characterized the question about the dates as a factual question. Petition, at 1. I should now like to urge that, although the underlying question is factual, the Examiner's decision on the question is wrong as a matter of law. The law requires that "A hearing examiner . . . shall conduct a hearing or appeal in a manner that ascertains the substantial rights of the parties." Md. Code Ann., Labor and Employment, §8-506(a)(1). Although evidence on the dates eventually was received, I believe that it was not received "in a manner which ascertains the substantial rights of the parties," given the Examiner's repeated assertions that he could not decide the only issue to which that evidence was relevant.

15. When the Examiner did decide the question of the dates, he made no mention of the evidence, and simply affirmed the earlier, confused, determination. Decision, at 2 (Record, at 51). The decision is clearly mistaken, since both parties testified that the week ending May 22, 1993 was within the Spring 1993 contractual period (and an exhibit to this effect was offered by the employer), and since no contradictory evidence appeared.

The Second Question.

16. The second question is whether, from May 23, 1993 until August 12, 1993, I had a reasonable assurance of returning to work in the fall. I discussed this in my Petition, ¶¶ 10-22.

17. My central contentions are that the standard which must govern is that of Sinai Hospital of Baltimore, Inc. v. Department of Education and Training, 309 Md. 28 (1987), at 40, and that, under that standard, I did not have a reasonable assurance. The former contention is discussed in the Petition, esp. at ¶ 12. The latter is discussed in the Petition, esp. at ¶¶ 17-21. In the interest of efficiency, I shall not reprise the Petition's discussions here.

18. There are two points which it may be useful to add. First,

the relevance of the list of facts in the Petition's n.6, at 6, may not be entirely clear. These are facts which make rationally relying on an assurance more difficult.

19. Second, n.6 reports that I have failed to find a case having all the features of this one in which a reasonable assurance was found. That remains true; but there may be persuasive value in one similar case (in which a reasonable assurance was not found), *Grand Rapids Public Schools v. Falkenstern*, 425 N.W.2d 128 (Mich.App. 1988).

20. In two respects<sup>1</sup>, Grand Rapids does not favor me. First, in March, 1981, the teacher claimants (who claimed for the summer of 1981) were sent notices that they had been laid off. *Id.*, at 129-130. Second, the Michigan Court is deferential to the state unemployment agency. *Id.*, at 132 and 133.

21. However, in substance Grand Rapids does favor the position which I urge. In June, 1981, the claimants received explicit, written assurances from the school district that they could after all expect to return to work. *Id.*, at 130. Claimants did return. *Id.* It was nevertheless found that ". . . the Board of Review's decision (i.e., that the letter sent to claimants in June of 1981 did not constitute a reasonable assurance of future employment as required by statute) was not contrary to law or unsupported by competent, material, and substantial evidence." *Id.*, at 132. A standard resembling that of Sinai Hospital was used. *Id.*, at 131.

22. It is true that this decision is not de novo--that it is a decision that the Michigan Board of Appeals did not err. But the circumstances include an explicit assurance (favoring the employer), which is absent in this case. Warnings about dangers flowing from budgetary matters are present in both cases--rescinded by the assurance in the Michigan case, but unrescinded here. In the Michigan case, it does not appear that the teachers were semester-by-semester contractors, as I was, or that the summer itself included academic terms for which work was sought, as was true in this case. The applicable standard is substantially the same as that in Maryland.

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<sup>1</sup>Grand Rapids also rejects the proposition that the reasonableness of an assurance must be judged from the point of view of the employee. At 132, n.5. But this rejection has to do with the likelihood that a provided assurance is true. My argument is that no adequate assurance was provided. The cited note also defines "'assurance'" as "some action taken on the part of the employer", and the text, two sentences after the note, refers to an "assurance given by a school district to one of its employees."

23. For these reasons, I think that (unless the area of indeterminacy in the law is here quite large), the absence of error by the Michigan Board of Appeals strongly suggests error by the Maryland Hearing Examiner. And to find such a large area of indeterminacy would itself depart from the principle of interpretation in favor of the claimant, required by Sinai Hospital.

Corrections.

24. In my Petition, n.4, at 5, I report that my answer to a certain question included the information that I did not have a copy of the Fall, 1993 Course Guide. According to the Record, at 36, it was only Mr. Curtis who mentioned not having a copy. It is likely, therefore, that in n.4 my report of my answer was confused.

25. In the Record, at 33, I am reported as saying ". . . it is not literally treated . . ." I believe that these words should be ". . . it is not literally true that . . ." (emphasis added).

I certify that an exact copy of the above response was mailed to The Maryland Department of Economic & Employment Development, at 217 East Redwood Street - Room 1101 / Baltimore, MD 21202, on the 10th day of March, 1994.

Stanley Paul Kingie

STANLEY P. KINZIE  
Appellant  
vs.

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
1994 FEB -2 ACT CIVIL COURT

TOWSON STATE UNIVERSITY 360224 CIVIL DIVISION

and  
BOARD OF APPEALS,  
Department of Economic and  
Employment Development  
Appellees.

\* BALTIMORE CITY  
\* Civil Action No.  
\* 93337061/CL173470  
\*

AMENDED ANSWER

The Board of Appeals, Department of Economic and Employment Development (the "Board"), an Appellee herein, moves to correct the caption in its Answer, filed on December 20, 1993, by substituting **Towson State University** 360224 for Valerie D. Bryan as the Appellee with the Board in this matter. This amendment accurately reflects the proceedings before the Board.

Respectfully submitted

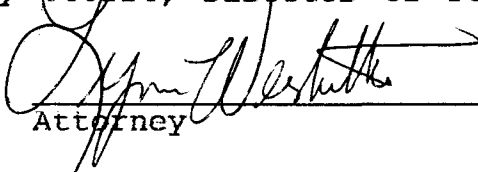
J. JOSEPH CURRAN, JR.  
Attorney General of Maryland



\_\_\_\_\_  
Lynn Weiskittel  
Assistant Attorney General  
Rachel Nunn, Staff Attorney  
Michele McDonald, Staff Attorney  
217 East Redwood Street  
11th Floor  
Baltimore, MD 21202  
Telephone: (301) 333-4813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 1994 I mailed a copy of the foregoing Amended Answer to Stanley P. Kinzie, 2909 Guilford Ave, Balto MD 21218 and to Towson State University 360224, Director of Personnel, Towson MD 21204.

  
\_\_\_\_\_  
Attorney

 **Maryland**  
Department of Economic &  
Employment Development

217 EAST REDWOOD STREET - ROOM 1101  
BALTIMORE, MARYLAND 21202

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
1994 JAN 27 A 7 23  
CIVIL DIVISION

(3)  
A-S

January 25, 1994

Stanley P. Kinzie  
2909 Guilford Avenue  
Baltimore, MD 21218

RE: Kinzie v. Towson State Univ. 360224 & Board of Appeals,  
DEED, Baltimore City, Civil Action No. 93337061/CL173470

Dear Mr. Kinzie:

Because you filed an appeal, the Department of Economic and Employment Development ("DEED") prepared, at no cost to you, the Record of the administrative proceedings concerning your application for unemployment insurance benefits. The Record contains all documents relevant to your case and probably includes a transcript of the agency hearing. Today DEED mailed a certified copy of the Record to the Clerk of the Circuit Court and a copy to you.

The Clerk of the Court will notify you when the Record has been filed. Within 30 days after the Clerk notifies you that the Record has been filed, Maryland Rule 7-207 **REQUIRES** that you file a Memorandum that sets forth the reasons and legal basis for your appeal. You may find your copy of the Administrative Record helpful when preparing your Memorandum. You **MUST** file the Memorandum stating why you believe the agency's decision was wrong. If you fail to file the Memorandum, DEED will file a Motion to Dismiss your appeal. To file your Memorandum, you may either mail it or take it to the Clerk's Office in the Circuit Court just as you did with your Order for Appeal. A COPY of the Memorandum and anything else you file in court MUST be sent to this office.

You may wish to discuss your case with a private attorney or with Legal Aid. **ANY INQUIRY ABOUT THE STATUS OF THIS APPEAL SHOULD BE MADE TO THE CLERK OF THE CIRCUIT COURT.**

Enclosures: Administrative Record  
Rule 7-207

cc: Sandra E. Banks, Clerk: Please file the attached copy of the Record.

**Rule 7-207. MEMORANDA**

**(a) Generally**

Within 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on. Within 30 days after service of the memorandum, any person who has filed a response, including the agency when entitled by law to be a party to the action, may file an answering memorandum in similar form. The petitioner may file a reply memorandum within 15 days after service of an answering memorandum. Except with the permission of the court, a memorandum shall not exceed 35 pages. In an action involving more than one petitioner or responding party, any petitioner or responding party may adopt by reference any part of the memorandum of another.

**(b) When Not Required**

Memoranda are not required in an action for judicial review of a decision of the Workers' Compensation Commission or in any other action where the review is de novo.

**(c) Modification of Time Requirements**

The time for filing a memorandum may be shortened or extended by (1) stipulation of the parties filed with the clerk so long as the first memorandum and any answering memorandum are filed at least 30 days, and any reply memorandum is filed at least ten days, before the scheduled hearing, or (2) order of the court entered pursuant to Rule 1-204.

**(d) Sanctions for Late Filing of Memoranda**

If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the moving party. A person who has filed a response but who fails to file an answering memorandum within the time prescribed by this Rule may not present argument except with the permission of the court.

Committee note: The Committee intends that all issues and allegations of error be raised in the memoranda, and that ordinarily an issue not raised in a memorandum should not be entertained at argument. The Committee does not intend to preclude a person who has filed a preliminary motion, but not an answering memorandum, from arguing the issues raised in the preliminary motion.

Cross reference: Gastano v. Calvert County, 310 Md. 121 (1987).

Source: This Rule is in part derived from former Rule B12 and in part new.

STANLEY P. KINZIE : IN THE  
v. : CIRCUIT COURT  
TOWSON STATE UNIVERSITY 360224 : FOR  
and : BALTIMORE CITY  
BOARD OF APPEALS : Civil Action No.  
Department of Economic and : 93337061/CL173470  
Employment Development

RECORD BEFORE THE  
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
BOARD OF APPEALS





# Maryland

Department of Economic &  
Employment Development

217 EAST REDWOOD STREET — ROOM 1101  
BALTIMORE, MARYLAND 21202

STANLEY P. KINZIE	:	RECORD BEFORE THE
v.	:	DEPARTMENT OF
TOWSON STATE UNIVERSITY 360224	:	ECONOMIC AND EMPLOYMENT
and	:	DEVELOPMENT
BOARD OF APPEALS	:	APPEAL NO. 9316986
Department of Economic and Employment Development		

THIS IS TO CERTIFY that, to the best of my knowledge, the following is a true copy of documents and papers, and transcript of testimony taken in the matter, together with findings of fact and decisions therein, this 25<sup>th</sup> day of January, 1994.

STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT

BY: Alice M. Bragden

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STATE OF MARYLAND  
 DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
 OFFICE OF UNEMPLOYMENT INSURANCE

Claim Cert Filed

**FACT FINDING REPORT**

Date Conducted 07-27-93  
 Claimant's Name Stanley P. Kenzie  
 Social Security Number 449-196-3510  
 Effective Date: \_\_\_\_\_  
 Occupation: \_\_\_\_\_

Unresolved Issue (H02)  
 Create and Resolve Issue (H03)  
 Redetermination/Corrected Determination (H05)  
 Issue: Recheck Employment

**CLAIMANT'S STATEMENT**

Claimant present? YES  NO  If no, how contacted? Call by telephone, he did not answer the phone  
 FRO  SR6 Sent Date: \_\_\_\_\_ SR6 Returned? Yes  No   
 Name of employer: Howard State University  
 FDW: \_\_\_\_\_ LDW: \_\_\_\_\_ Rate of Pay: \_\_\_\_\_

Are you able, available and actively seeking full-time work? YES  NO  If no, explain. If yes, list recent contacts: \_\_\_\_\_

Claimant's Rebuttal: \_\_\_\_\_

I have read and hereby affirm under penalties of perjury that the foregoing information is true and correct to the best of my knowledge, information and belief.

Claimant's Signature: \_\_\_\_\_

**EMPLOYER'S STATEMENT**

Name of employer/company: Howard State University Employer present? Yes  No   
 Separation notice received: 04-05-93 207  Employer Letter  Other   
 LDW: \_\_\_\_\_ Reason for separation from above: Full employee

Employer contacted by phone? Yes  No  Telephone number: 830-2126  
 Name of company officer: Cynthia Williams Position/title: Personnel Associate  
 Claimant present when telephone information was received? Yes  No   
He had not worked 05/23/93. His contract ended. Claimant will be returning in fall. They have 17th 62 left 93

EMPLOYER'S STATEMENT

ADDITIONAL INFORMATION

*Claimant failed to report for appt 07/27/93*

*7/29/93 (65)*

*OK (Signature)*

BENEFIT DETERMINATION

- Unresolved Issue (H02)
- Create and Resolve Issue (H03)
- Redeter/Corrected Deter (H05)

SSN 449 96 3501 0 Name Check S KIW

Sequence Number: 02 Issue Code: 22 Program: 00 Java:     

Resolution Code: 22 Penalty?: Y Count?: Y Time Lapse:     

Statement Number: 0220 Text Date: 052293 Examiner I.D.: 010AV

Employer Number: 65818689 Non-Charge?:      Non-Charge Start Date:     

Start Date: 051693 Disq. Weeks: 99 OP Source: J OP Fault: B

SS Pension:      Effective:     

Federal Pension:      Effective:      Contributory?:     

Other Pension:      Effective:      Contributory?:     

Salary:      Effective:     

Bonus/Special Pay:      Profit Sharing Pay:      Contributory?:     

Severance Pay:      Lump Sum Pension:      Contributory?:     

VH 1:      W/E:      VH 2:      W/E:     

VH 3:      W/E:     

Redet/Corr. Deter. Reason:     

NEVER APPLICABLE  
 MEGEIV  
 DW: 2  
 07/27/93

Date Completed: 07/27/93

Claims Examiner: *R. Green*

*2*

Per Date 207

S KINZIE



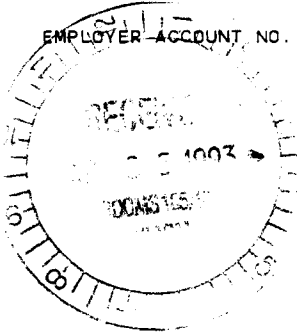
KB  
4/2  
[Signature]

REQUEST FOR SEPARATION INFORMATION

EMPLOYER ACCOUNT NO. 65810689

RUN DATE: 03/12/93

DUE DATE: 03/22/93



TOWSON STATE UNIVERSITY 380224  
DEPARTMENT OF PERSONNEL  
301 W PRESTON ST RM 510  
BALTIMORE MD 21201-0000

The claimant whose name is shown below has filed a claim for Unemployment Insurance benefits. Our records indicate that the claimant worked for you. Please answer the questions below, sign and mail this copy of the form in the enclosed envelope by the **DUE DATE. A PENALTY OF \$15 WILL BE ASSESSED IF THIS FORM IS RETURNED LATE OR INCOMPLETE.** NOTE: The law provides penalties for false statements.

SSN	Employee's Name	Other Last Name	Effective Date Of Claim
449-96-3501	STANLEY P KINZIE		06/28/92

REASON FOR SEPARATION

- |   |  |
|---|--|
| <input type="checkbox"/> 1. LAYOFF (10 WEEKS OR LESS) (97)<br>EXPECTED DATE OF RETURN _____   | <input type="checkbox"/> 6. SCHOOL VACATION (22) Does claimant have a written, verbal or implied understanding that he/she will be returning to substantially the same or a better position when school resumes?<br>YES <input type="checkbox"/> NO <input type="checkbox"/> |
| <input type="checkbox"/> 2. LACK OF WORK / REDUCTION IN FORCE (99)  | <input checked="" type="checkbox"/> 7. STILL EMPLOYED ON A CONTINUOUS PART TIME BASIS  |
| <input type="checkbox"/> 3. QUIT (30) <i>Still employed - contract</i>  | <input type="checkbox"/> 8. VACATION/HOLIDAY SHUT DOWN<br>START DATE _____ END DATE _____  |
| <input type="checkbox"/> 4. DISCHARGED (50): Did the employee follow your instructions and work to the best of his/her ability?<br>YES <input type="checkbox"/> NO <input type="checkbox"/> | <input type="checkbox"/> 9. LEAVE OF ABSENCE (88) _____  |
| <input type="checkbox"/> 5. LABOR DISPUTE (29)  |  |

**IF REASON IS 3,4,7,9 PLEASE EXPLAIN IN DETAIL ON THE BACK OF THIS FORM.**

IT MAY RESULT IN RELIEF OF BENEFIT CHARGES, IF ALLOWED BY LAW.

FOR ANY PERIOD SINCE THE LAST DAY WORKED, HAS THE CLAIMANT RECEIVED, OR WILL HE/SHE RECEIVE:

- PENSION OR ANY OTHER RETIREMENT PAYMENT? \_\_\_\_\_  
PER MONTH \$ \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_  
LUMP SUM \$ \_\_\_\_\_  
DID CLAIMANT CONTRIBUTE? YES  NO
- PROFIT SHARING AMT \$ \_\_\_\_\_ DATE PAID \_\_\_\_\_
- BONUS OR SPECIAL PAYMENT \$ \_\_\_\_\_ DATE PAID \_\_\_\_\_
- SEVERANCE PAY \$ \_\_\_\_\_ PAID FOR DATES \_\_\_\_\_
- VACATION PAY \$ \_\_\_\_\_ PAID FOR DATES \_\_\_\_\_
- HOLIDAY PAY \$ \_\_\_\_\_ PAID FOR DATES \_\_\_\_\_

Claimant's First Day of Work			Claimant's Last Day of Work		
MO	DAY	YR	MO	DAY	YR
01	27	93			

EMPLOYEE WAGES: (GROSS \$)	
HOURLY	\$ _____
WEEKLY	\$ _____
YEAR TO DATE	\$ _____

\*  **APPLICABLE TO WAGE TRANSFER** YOUR FORMER EMPLOYEE HAS FILED A CLAIM FOR UI BENEFITS IN ANOTHER STATE. AS A RESULT, WAGES ARE BEING TRANSFERRED OUT-OF-STATE. MD. HAS NO JURISDICTION OVER THIS CLAIM. YOUR ACCOUNT MAY BE CHARGED FOR BENEFITS PAID.

Note: If the reason for separation given by you on this form is something other than layoff or lack of work, you may be requested to be available by telephone to provide additional information when the claimant's fact finding interview is held. If you recall this individual to work, or if this individual refuses an offer of work, notify the Local Office in writing within 15 days of the job offer.

Trade Name Of Employer State of Maryland  
Name of Official (Please Print) Marlene DeShields Signature Marlene DeShields  
Title Administrative Officer Telephone No. (410) 225-1000 Date 3/22/93

SEPARATION INFORMATION (Information which may affect the claimant's eligibility for benefits)

FAILURE TO COMPLETE AND RETURN THIS FORM ON TIME PROHIBITS THE DEPARTMENT FROM RELIEVING YOUR ACCOUNT OF ANY CHARGES FOR BENEFITS PAID AS A RESULT THEREOF.

RETURN THIS FORM TO THE ADDRESS BELOW IN THE ENVELOPE PROVIDED. FOLD SO THE ADDRESS SHOWS THROUGH THE WINDOW. YOU MAY ATTACH SUPPORTING DOCUMENTATION. PLEASE MAKE A COPY OF THIS FORM FOR YOUR RECORDS.

01  
DEED/OFFICE OF UNEMPLOYMENT INS.  
BALTIMORE LOCAL OFFICE  
P. O. BOX 552  
BALTIMORE, MD 21203

**RECALL** - IF THE CLAIMANT REFUSES AN OFFER OF EMPLOYMENT WHILE RECEIVING BENEFITS, NOTIFY THE LOCAL OFFICE ABOVE IMMEDIATELY IN WRITING.

**LOCAL OFFICE INFORMATION** - Should you have any questions, please contact the Local Office shown above. Routine faxing of separation information is not permitted. Please only fax unemployment insurance forms if they have not been mailed by the due date printed on the form or if requested to do so. Both sides of this form must be returned.

LOCAL OFFICE NO.	TELEPHONE	FAX NO.
08 Annapolis	(410) 974-7942	(410) 974-7595
01 Baltimore	(410) 333-5311	(410) 333-5739
45 Baltimore-Northwest	(410) 358-6666	(410) 358-6685
22 BelAir	(410) 836-4611	(410) 836-4640
10 Cambridge	(410) 228-0700	(410) 221-1817
11 Chestertown	(410) 778-3525	(410) 778-3527
07 College Park	(301) 441-2175	(301) 441-2166
23 Columbia	(410) 312-5777	(410) 312-5761
56 Combined Wage Claim Section	(410) 333-7199	(410) 333-7198
26 Crisfield	(410) 968-0440	(410) 968-2149
03 Cumberland	(301) 777-2124	(301) 777-5978
24 Denton	(410) 822-3030	
25 Easton	(410) 822-3030	(410) 820-9966
40 Eastpoint	(410) 288-9244	(410) 288-9260
13 Elkton	(410) 996-0576	(410) 996-0555
05 Frederick	(301) 694-2180	(301) 694-1916
02 Glen Burnie	(410) 508-2350	(410) 508-2348
34 Grasonville	(410) 758-2098	(410) 827-7265
04 Hagerstown	(301) 791-4711	(301) 791-4673
93 Landover	(301) 386-0701	(301) 386-0709
21 Leonardtown	(301) 475-5595	(301) 475-4036
50 Liable State Unit	(410) 333-7230	(410) 333-7539
14 Oakland	(301) 334-3972	(301) 334-2106
42 Ocean City	(410) 632-1886	(410) 289-6619
33 Prince Frederick	(410) 535-8817	(301) 855-1961
36 Princess Anne	(410) 651-0801	(410) 651-3908
12 Salisbury	(410) 543-6647	(410) 543-6646
27 Snow Hill	(410) 632-1886	(410) 632-2905
09 Towson	(410) 321-3931	(410) 321-2201
20 Waldorf	(301) 645-8711	(301) 645-8713
15 Westminster	(410) 876-2240	(410) 848-9699
43 Wheaton	(301) 929-4355	(301) 933-0749
Inquiry & Correspondence Unit	(410) 333-7980	

RECEIVED  
AUG 25 1993

4

SSN: 449-96-3501 0

APPELLANT CODE: 02 EMPLOYER *CL*

APPEAL NUMBER: 9316986 SEQ: 002

LOCAL OFFICE: 01 BALTIMORE

CLAIMANT:  
STANLEY P KINZIE  
2909 GUILFORD AVE

SPECIALIST ID: 01041

PROGRAM TYPE: 00 UI

BALTO , MD 21218-  
(301) 243-2450 x

MULTIPLE APPEAL: No

\*TYPE OF APPEAL:

EMPLOYER ACCOUNT NUMBER: 0065810689  
EMPLOYER NAME:  
TOWSON STATE UNIVERSITY 360224  
DIRECTOR OF PERSONNEL

\*BYB: 06/28/1992

\*WBA: 223.00

TOWSON , MD 21204-  
(000) 000-0000 x

DATE ENTERED: 08/18/1993

DATE REC'D L.O.: 08/18/1993

EMPLOYER REP NAME:  
TOWSON STATE UNIVERSITY 360224  
DEPARTMENT OF PERSONNEL  
301 W PRESTON ST RM 510  
BALTIMORE , MD 21201-0000  
(000) 000-0000 x

DATE OF APPEAL: 08/13/1993

\*DEADLINE DATE: 08/13/1993

TIMELY: Yes

\*INTERPRETER: No

LANGUAGE: No Interpreter

OVERPAYMENT: Yes

COMMENTS

EUC

DATE OF BENEFIT DETERMINATION: 07/29/1993  
LO Issue: 22 SCHOOL EMPLOYMENT  
LA Issue: 22/909 School Employment

BENEFIT DETERMINATION

THE CLAIMANT WAS EMPLOYED IN AN INSTRUCTIONAL, RESEARCH OR PRINCIPAL ADMINISTRATIVE CAPACITY FOR AN INSTITUTION OF HIGHER EDUCATION. UNEMPLOYMENT COMMENCED BETWEEN TWO SUCCESSIVE ACADEMIC YEARS, OR TWO REGULAR TERMS WHETHER OR NOT SUCCESSIVE, OR DURING A PERIOD OF CONTRACTUAL, PAID SABBATICAL LEAVE. THE CLAIMANT HAS A CONTRACT TO PERFORM SERVICES FOR AN INSTITUTION OF HIGHER EDUCATION, A NON-PROFIT ORGANIZATION OR A GOVERNMENTAL ENTITY ON BEHALF OF THE INSTITUTION OF HIGHER EDUCATION FOR BOTH YEARS OR TERMS. BENEFITS BASED ON THESE EARNINGS ARE DENIED UNDER SECTION 8-909 OF THE MD. U.I. LAW WITH THE WEEK BEGINNING 05/22/93 AND UNTIL THE CLAIMANT NO LONGER HAS A CONTRACT TO PERFORM SERVICES WITH ANY INSTITUTION OF HIGHER EDUCATION.

PENALTY

BENEFITS ARE DENIED WEEK BEGINNING 05/16/93 UNTIL MEETING REQUIREMENTS OF THE

DET/UIA 941 (ISSUED 1/86) MABS/LAN APPEALS



5

PENALTY (Continued)

LAW.

AS A RESULT OF THIS DETERMINATION, THE CLAIMANT IS FOUND TO HAVE RECEIVED BENEFITS FOR WHICH HE/SHE WAS INELIGIBLE. THIS CREATES AN OVERPAYMENT TOTALLING \$1708.00 WHICH MUST BE PAID.

PENALTY: Yes  
START DATE: 05/16/1993  
DISQUALIFICATION WEEKS: 99

6



EXPLANATION FOR THE RECORD

Deed does not retain a copy of the "NOTICE OF BENEFIT DETERMINATION" sent to claimant's and affected employers because these notices are computer generated data-mailers.

The following page is a photocopy of a blank data-mailer. The information on the previous page was printed on such a form and mailed to the claimant and affected employer.

DEED retains the information printed on the data-mailer form (DEED OUI 222) in each claimant's computer file on screen 941 of the Maryland Automated Benefits System (MABS).

STATE OF MARYLAND  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
OFFICE OF UNEMPLOYMENT INSURANCE

NOTICE OF BENEFIT DETERMINATION

SSN:  
DATE MAILED:  
BENEFIT YEAR BEGINS:

PREDETERMINATION HEARING  
 PRETERMINATION HEARING  
 REDETERMINATION  
LOCAL OFFICE ADDRESS

ISSUE  
SECTION OF LAW  
DATE OF DETERMINATION  
SPECIALIST ID

THE LAST DAY TO FILE AN APPEAL IS:

(IF THIS DECISION IS CHANGED ON APPEAL, THE CLAIMANT  
WILL BE REQUIRED TO REPAY ANY RESULTING OVERPAYMENT.)

MAIL REQUEST FOR APPEAL TO  
LOCAL OFFICE ADDRESS ABOVE

DETERMINATION:

- BENEFITS ARE ALLOWED. IF OTHERWISE ELIGIBLE.
- BENEFITS ARE DENIED WEEK BEGINNING \_\_\_\_\_ AND FOR THE \_\_\_\_\_ WEEKS ENDING \_\_\_\_\_
- BENEFITS ARE DENIED WEEK BEGINNING \_\_\_\_\_ AND UNTIL THE CLAIMANT BECOMES REEMPLOYED AND EARNS  
AT LEAST TEN (10) TIMES HIS/HER WEEKLY BENEFIT AMOUNT \$ \_\_\_\_\_
- BENEFITS ARE DENIED FROM \_\_\_\_\_ TO \_\_\_\_\_ AND SEE BELOW \*
- BENEFITS ARE DENIED WEEK BEGINNING \_\_\_\_\_ UNTIL MEETING REQUIREMENT OF THE LAW.
- AS A RESULT OF THIS DETERMINATION, THE CLAIMANT IS FOUND TO HAVE RECEIVED BENEFITS FOR WHICH HE/SHE  
WAS INELIGIBLE. THIS CREATES AN OVERPAYMENT TOTALING \$ \_\_\_\_\_ WHICH MUST BE REPAID. YOU MUST  
REPAY THIS DEBT PROMPTLY TO AVOID LEGAL ACTION. IN ADDITION NO FURTHER BENEFITS WILL BE PAID TO YOU  
UNTIL THIS DEBT IS REPAID. MAKE YOUR CHECK PAYABLE TO: DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOP  
MENT AND MAIL IT TO THE OFFICE OF UNEMPLOYMENT INSURANCE, 1100 NORTH EUTAW STREET, CASHIER'S UNIT,  
ROOM 412, BALTIMORE, MARYLAND 21201. PUT YOUR SOCIAL SECURITY NUMBER ON THE CHECK.
- BENEFITS ARE DENIED WEEK BEGINNING \_\_\_\_\_ AND UNTIL THE CLAIMANT BECOMES REEMPLOYED AT LEAST  
4 WEEKS AND EARNS FOUR (4) TIMES HIS/HER WEEKLY BENEFIT AMOUNT \$ \_\_\_\_\_

\* A DENIAL OF BENEFITS FOR A LIMITED NUMBER OF WEEKS UNDER SECTIONS 8-1001, 8-1003 OR 8-1005  
WILL RESULT IN DENIAL OF FEDERAL EMERGENCY UNEMPLOYMENT COMPENSATION (EUC) BENEFITS UNTIL  
THE INDIVIDUAL HAS BECOME REEMPLOYED.

SEE BACK OF FORM FOR APPEAL RIGHTS.

8

## APPEAL RIGHTS:

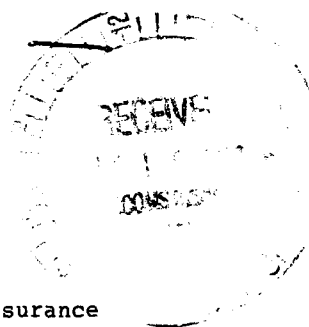
**CLAIMANT AND EMPLOYER:** Section 8-509 of the Maryland Unemployment Insurance Law provides the right to appeal this determination. The appeal must be in writing and may be submitted in person or mailed to the Local Office within (15) days of the determination. If mailed, the appeal must be postmarked within (15) days of the date of this determination. A claimant who appeals a determination and remains unemployed must continue to file timely claims for each week. **NO LATE CLAIMS WILL BE ACCEPTED.**

### SECTION OF LAW

### PROVISIONS OF THE LAW REGARDING BENEFITS

- 8-801 The claimant must be totally or partially unemployed through no fault of his own.
- 8-803 A claimant must report all earnings for each week he files claims for unemployment benefits.
- 8-804 The dependents allowance is payable only if the claimant provides support for the dependent child under 16 years of age at the beginning of his benefit year.
- 8-809 If the claimant has received benefits for which he is found to have been ineligible, the claimant must repay those benefits. In addition, the amount may be recovered from benefits payable to the claimant in the future.
- 8-809 If the claimant knowingly made a false statement or failed to disclose material facts in order to obtain benefits, he will be disqualified for one year, must repay all benefits received, and may be prosecuted.
- 8-901 The claimant must file a claim for each week of unemployment in accordance with regulations.
- 8-902 The claimant must register for work and continue to report and keep his registration active.
- 8-903 The claimant must be able and available for work and make a reasonable effort to find work.
- 8-910 The claimant who received benefits in a previous benefit year shall not be eligible for future benefits unless he has worked for an employer and earned wages equal to ten times his new weekly benefit amount after the beginning of the first of such benefit years.
- 8-1001 If the claimant voluntarily left work without good cause, he may be disqualified from five to ten weeks or until he has become reemployed and earned ten times his weekly benefit amount. If a claimant voluntarily leaves his work to become self-employed, to accompany or join his spouse in a new locality or to attend an educational institution he will be disqualified until he has become reemployed and earned ten times his weekly benefit amount.
- 8-1002 If the claimant was discharged or suspended for gross misconduct connected with his work, he will be disqualified until he has earned ten times his weekly benefit amount.
- 8-1003 If the claimant was suspended or discharged for misconduct (not gross) connected with his work, he may be disqualified from five to ten weeks.
- 8-1004 If the claimant's unemployment is due to a stoppage of work because of a labor dispute (other than a lockout) he will be disqualified for the duration of the stoppage of work.
- 8-1005 If the claimant failed, without good cause, to apply for available, suitable work, or to accept such work when offered to him, he may be disqualified from five to ten weeks or until he becomes reemployed and has earned ten times his weekly benefit amount.
- 8-1006 If the claimant has applied for or is receiving unemployment benefits under the laws of another State or of the United States, he is not eligible for benefits in Maryland.
- 8-1007 If the claimant is receiving vacation or holiday pay and has a definite return to work date at the time of separation, benefits will be denied or reduced for the week(s) to which the pay applies.
- 8-1008 If the claimant is receiving a pension, annuity, profit sharing, or retirement pay other than Social Security, or any other similar periodic payment based on his previous work for a base period employer, benefits will be denied or reduced.
- 8-1009 If the claimant receives dismissal pay, benefits will be denied or reduced for the week(s) to which the pay applies.
- Note: No disqualification shall be applied under this Section if the claimant's unemployment is due to abolition of his job.

J01 8/18/93



2909 Guilford Avenue  
Baltimore, MD. 21218  
August 12, 1993

EUC

449-96-3501

Office of Unemployment Insurance  
Baltimore Local Office  
P. O. Box 552  
Baltimore, MD. 21203

Dear Sir or Madam:

Thank you for the copy of the July 29th benefit determination. As I reported on August 5th, I wish to appeal the determination. The following observations may be helpful.

First, benefits were denied for the week ending May 22nd. I think this is a mistake: I gave my final exam on May 21st, and thus worked during that week. It was not a period between academic terms or years.

Second, according to the determination, 'The claimant has a contract to perform services for an institution of higher education.' This is incorrect: I had no contract upon leaving Towson State in May, and I have none now. (Nor have I had one in the interim.) It is true that I was approached about returning, and that I expressed my probable willingness to do this. However, I was also told that such plans are rather seriously contingent on funding and enrollment. So I doubt I had a 'reasonable assurance' that I would return.

Third, benefits have been denied, apparently, for each summer week beyond May 22nd. But the summer is itself an academic term, and I twice sought a Towson State teaching assignment for that term. Perhaps benefits should be denied only during true interim periods and not during academic periods when work was sought but denied.

The third point is perhaps especially relevant for semester-by-semester contractors, like myself, as opposed to regular employees. Also, if it is not accepted, it seems the State could deny both wages and unemployment benefits during any academic terms. It need only offer a reasonable assurance of work in some future term. But that seems not an intended consequence of the law.

I regret missing the original determination hearing. (I was out of town, due to the death of my father.) I hope the above information is useful. If you have questions, please don't hesitate to call me at 243-2450.

Thank you for your time and attention.

Yours sincerely,

*L. P. Kinzie*

Stanley Paul Kinzie  
449-96-3501

*Claimant Appeal*

RECEIVED  
#01-ROOM 121  
JUL 18 1993  
STATE OF MARYLAND  
Unemployment Insurance Administration  
BALTIMORE, MD. 21201

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(410) 333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Appellant's Name: **STANLEY P. KINZIE** Employer's Name: **TOWSON STATE UNIVERSITY** Date Mailed: **Aug 21, 93** Appeal No: **8316986** SS No: **449-96-3501**

Appellant: Employer

Local Office No. 01

A hearing on this appeal will be held before the Hearing Examiner on

**SEPTEMBER (THIRTEENTH), 1993** at **12:30 P.M. EDT** (**PLEASE BE ON TIME**)

Plan to arrive 15 minutes early.

**HEARING LOCATION**  
Baltimore U.I. Office  
Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: **R.E. Frederick, ESQ.**

Mail To:  
**STANLEY P. KINZIE**  
**2909 GUILFORD AVE**  
**BALTO, MD 21218-**

NOTICE TO PARTIES: If you have already received benefits, a partial or total disqualification may be imposed by the Hearing Examiner. If this occurs, you may be required to pay back some or all of the benefits received.

THIS HEARING IS THE LAST STEP AT WHICH EITHER THE CLAIMANT OR THE EMPLOYER HAS THE ABSOLUTE RIGHT TO PRESENT EVIDENCE. THE DECISION WILL BE MADE ON THE EVIDENCE PRESENTED. THE DECISION WILL AFFECT THE CLAIMANT'S CLAIM FOR BENEFITS, AND IT MAY AFFECT THE EMPLOYER'S CONTRIBUTION TAX RATE OR REIMBURSEMENT ACCOUNT.

WHETHER THE CLAIMANT IS ABLE, AVAILABLE AND ACTIVELY SEEKING WORK WITHIN THE MEANING OF SECTION 903 OF THE LAW IS ALWAYS AN ISSUE THAT MAY BE RULED ON BY THE HEARING EXAMINER.

PLEASE BE ON TIME, OTHERWISE THE APPEAL WILL BE DISMISSED. LENGTHY CASES (EXCEEDING 30 MINUTES) MAY BE CONTINUED TO A LATER DATE UNLESS PRIOR WRITTEN REQUEST FOR ADDITIONAL TIME IS MADE.

SEE THE OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION.

PLEASE BRING THIS NOTICE WITH YOU.

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name  
**STANLEY P. KINZIE**

Employer's Name  
**TOWSON STATE UNIVERSITY**

Date Mailed  
**August 21, 1993**

Appeal No.  
**3610986**

SS No.  
**449-96-3501**

Appellant: Employer

Local Office No. 01

A hearing on this appeal will be held before the Hearing Examiner on

**SEPTEMBER (THIRTEENTH), 1993**

at **12:30 P.M. EDT**

(PLEASE BE ON TIME)

Plan to arrive 15 minutes early.

HEARING LOCATION

**U.I. Office**  
Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: **R.E. Frederick, ESQ.**

Mail To:

**TOWSON STATE UNIVERSITY 360224**  
**DIRECTOR OF PERSONNEL**  
**TOWSON, MD 21204-**

NOTICE TO PARTIES: If you have already received benefits, a partial or total disqualification may be imposed by the Hearing Examiner. If this occurs, you may be required to pay back some or all of the benefits received.

THIS HEARING IS THE LAST STEP AT WHICH EITHER THE CLAIMANT OR THE EMPLOYER HAS THE ABSOLUTE RIGHT TO PRESENT EVIDENCE. THE DECISION WILL BE MADE ON THE EVIDENCE PRESENTED. THE DECISION WILL AFFECT THE CLAIMANT'S CLAIM FOR BENEFITS, AND IT MAY AFFECT THE EMPLOYER'S CONTRIBUTION TAX RATE OR REIMBURSEMENT ACCOUNT.

WHETHER THE CLAIMANT IS ABLE TO AVAIL ABLE AND ACTIVELY SEEKING WORK WITHIN THE MEANING OF SECTION 903 OF THE LAW IS ALWAYS AN ISSUE THAT MAY BE RULED ON BY THE HEARING EXAMINER.

**PLEASE BE ON TIME. OTHERWISE THE APPEAL WILL BE DISMISSED. LENGTHY CASES (EXCLUDING 30 MINUTES) MAY BE CONTINUED TO A LATER DATE UNLESS PRIOR WRITTEN REQUEST FOR ADDITIONAL TIME IS MADE.**

SEE THE OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION.

PLEASE BRING THIS NOTICE WITH YOU.

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION, ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 933-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name: STANLEY P. KINZIE  
Employer's Name: TOWSON STATE UNIVERSITY  
Date Mailed: AUG 21, 1993  
Appeal No.: 449-96-3501

Appellant: Employer

Local Office No. 01

A hearing on this appeal will be held before the Hearing Examiner on  
SEPTEMBER (THIRTEENTH), 1993 at 12:30 P.M. EDT (PLEASE BE ON TIME)  
SEPTEMBER 13, 1993

Plan to arrive 15 minutes early.

HEARING LOCATION  
Baltimore U.I. Office  
Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: K.E. Frederick, ESQ.

Mail To:  
TOWSON STATE UNIVERSITY 360224  
DEPARTMENT OF PERSONNEL  
301 W PRESTON ST RM 510  
BALTIMORE, MD 21201-0000

NOTICE TO PARTIES: If you have already received benefits, a partial or total disqualification may be imposed by the Hearing Examiner. If this occurs, you may be required to pay back some or all of the benefits received.

THIS HEARING IS THE LAST STEP AT WHICH EITHER THE CLAIMANT OR THE EMPLOYER HAS THE ABSOLUTE RIGHT TO PRESENT EVIDENCE. THE DECISION WILL BE MADE ON THE EVIDENCE PRESENTED. THE DECISION WILL AFFECT THE CLAIMANT'S CLAIM FOR BENEFITS, AND IT MAY AFFECT THE EMPLOYER'S CONTRIBUTION TAX RATE OR REIMBURSEMENT ACCOUNT.

WHETHER THE CLAIMANT IS ABLE TO AVAILABLE AND ACTIVELY SEEKING WORK WITHIN THE MEANING OF SECTION 909 OF THE LAW IS ALWAYS AN ISSUE THAT MAY BE RULED ON BY THE HEARING EXAMINER.

PLEASE BE ON TIME. OTHERWISE, THE APPEAL WILL BE DISMISSED. LENGTHY CASES (EXCEEDING 30 MINUTES) MAY BE CONTINUED TO A LATER DATE UNLESS PRIOR WRITTEN REQUEST FOR ADDITIONAL TIME IS MADE.

SEE THE OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION.  
PLEASE BRING THIS NOTICE WITH YOU.

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

INFORMATION FOR PARTIES TO THE APPEAL HEARING

WITHDRAWAL OF APPEAL

The party who filed the appeal may withdraw it at any time before the hearing if the Administrative Officer approves. If you do not wish to proceed with your appeal, you may request withdrawal by letter, or on Form DEED/OUUAD 379, which is available from the Claims Specialist in the Local Office, or from the Appeals Division in Room 511, 1100 North Eutaw Street, Baltimore, Maryland 21201.

HEARINGS, ISSUES, AGENTS AND ATTORNEYS

The Hearing Examiner will try to develop all of the facts of this case in order to give a fair hearing to all parties, but the Hearing Examiner will not conduct an investigation, contact witnesses not brought to the hearing or obtain documents which are not brought into the hearing by the parties. The only exception is for Department of Economic and Employment Development records, which you will have the right to see.

The Hearing Examiner will consider the issues in the Claims Examiner's determination which have been appealed. Also, the Hearing Examiner will rule on any issue which may develop in the course of the hearing concerning the Claimant's eligibility for benefits, if it is fair to both parties to do so in the circumstances of each case.

You may be represented by an attorney, or other authorized agent. You must pay your attorney his legal fee, but attorneys representing a claimant may not charge more than the fee approved by the Board of Appeals.

WITNESSES AND SUBPOENAS

Each party should arrange for all necessary witnesses to attend the hearing, and for all necessary documents to be presented at the hearing. When witnesses will not come voluntarily, or documents will not be produced voluntarily, you may request a subpoena from the Administrative Officer. This request must be in writing and must be received by the Administrative Officer at least five working days before the date of the hearing. The request must also give the name of the person to be subpoenaed, the address to which you want the subpoena delivered, and the name of the Maryland county where the person to be subpoenaed resides or is employed. Regarding records being subpoenaed, the request must include a description of the documents to be subpoenaed as well as the name of the custodian of the records, the address to which you want the subpoena delivered, and the name of the Maryland county where the custodian of the records is located. The Administrative Officer has the power to allow or to deny a request, or to allow part of a request.

NOTE: Hearing Examiner cannot make copies of documents. You must bring copies to the hearing of all documents you want submitted as evidence.

TABLE OF PENALTIES UNDER CODE OF MARYLAND, Labor and Employment Article Title 8

SECTION OF LAW	QUESTION	IF THE ANSWER IS YES, THE POSSIBLE PENALTY IS:
1001	Did the Claimant voluntarily quit his employment, without good cause?	From a 5 week disqualification up to a total disqualification*
1002	Was the Claimant suspended or discharged for gross misconduct?	Total disqualification*
1002.1	Was the claimant suspended or discharged for intentional aggravated misconduct?	Total disqualification* and loss of wage credits
1003	Was the Claimant suspended or discharged for misconduct?	From a 5 week disqualification up to a 10 week disqualification
1005	Did the Claimant refuse available, suitable work or fail to apply for it, without good cause?	From a 5 week disqualification up to a total disqualification*

\*A total disqualification lasts until the Claimant is employed again, meets an earning requirement, and then becomes unemployed again through no fault of his/her own.

ALL penalties under Sections 1001, 1002, 1002.1, 1003 or 1005 will result in ineligibility for Extended Benefits, or any Federal Unemployment Compensation Extension, unless the Claimant is reemployed after the date of the disqualification.

POSTPONEMENT OF HEARING

If you need a postponement of the hearing, you must request it in writing from the Administrative Officer at least five working days before the date of the hearing. The Administrative Officer will grant a postponement only if the Administrative Officer agrees that you have good cause for postponement. If you are not sure whether or not your case has been postponed, you may find out by contacting the Administrative Officer.

DISMISSAL

This appeal will be dismissed if the appealing party does not appear on time for the hearing.

INQUIRIES (OR YOU NEED AN INTERPRETER)

For further information, you may contact the Administrative Officer at (410) 333-6040, or write to Appeals, Room 511, 1100 N. Eutaw St., Baltimore, Maryland 21201.

HEARING RULES

The hearing rules are found in Section 808, CODE OF MARYLAND, Labor and Employment Article, Title 8 and Section 24.02.06 of the Code of Maryland Agency Regulations.

*(This page is a copy of the reverse side of the Appeal Hearing Notice)*

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DEPARTMENT OF PERSONNEL

Transmittal Slip

TO: Linda Cook  
Appeals

FROM: Marlene Deshield DATE 9-2-93  
(410) 225-4869 DUE \_\_\_\_\_

Re: Appeal: 9316986 SS# 449-96-3501

<input type="checkbox"/> Please Approve & Return	<input type="checkbox"/> For Your Signature
<input type="checkbox"/> As Requested	<input type="checkbox"/> Please Note & File
<input type="checkbox"/> Please Comment & Return	<input type="checkbox"/> Please Note & Return
<input type="checkbox"/> Copies On	<input type="checkbox"/> Please See Me
<input checked="" type="checkbox"/> For Your Information	<input checked="" type="checkbox"/> Please Take Charge of

REMARKS: *Please change following hearing notice to reflect correct appellant as the claimant. copy of notice attached*  
*Shant*

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant Name: **STANLEY P. KINZIE**      Employer Name: **TOWSON STATE UNIVERSITY 36022**      Date Mailed: **Aug 21, 1993**      Social Office No: **01**      SS No: **96-3501**

Appellant: **Employer**

A hearing on this appeal will be held before the Hearing Examiner on **SEPTEMBER (THIRTEENTH), 1993** at **1:30 P.M. EDT** (PLEASE BE ON TIME)  
Plan to arrive 15 minutes early.

**HEARING LOCATION**  
Baltimore U.I. Office  
Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: **R.E. Frederick, ESQ.**

**NOTICE TO PARTIES:** If you have already received benefits, a portion of your disqualification may be pro-rated by the Hearing Examiner, if this occurs, you may be required to pay back some or all of the benefits received.

**THIS HEARING IS THE LAST STEP AT WHICH EITHER THE CLAIMANT OR THE EMPLOYER HAS THE ABSOLUTE RIGHT TO PRESENT EVIDENCE. THE DECISION WILL BE MADE ON THE EVIDENCE PRESENTED. THE DECISION WILL AFFECT THE CLAIMANT'S CLAIM FOR BENEFITS, AND IT MAY AFFECT THE EMPLOYER'S CONTRIBUTION TAX RATE OR REIMBURSEMENT ACCOUNT.**

**WHETHER THE CLAIMANT IS ABLE TO OBTAIN WORK WITHIN THE MEANING OF SECTION 903 OF THE LAWS ALWAYS DEPENDS UPON THE HEARING EXAMINER'S DECISION. PLEASE BE ON TIME. OTHERWISE, THE APPEAL WILL BE DISMISSED. LENGTHY CASES EXCEEDING 90 MINUTES MAY BE CONTINUED TO A LATER DATE UNLESS PRIOR WRITTEN REQUEST FOR ADDITIONAL TIME IS MADE.**

**SEE THE OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION. PLEASE BRING THIS NOTICE WITH YOU.**

Mail To:  
**TOWSON STATE UNIVERSITY 360224**  
**DEPARTMENT OF PERSONNEL**  
**501 W PRESTON ST RM 519**  
**BALTIMORE, MD 21201-0000**

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 90

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION (P.O. BOX 151)  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 333-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Claimant's Name  
**STANLEY P. KINZIE**

Employer's Name  
**TOWSON STATE UNIVERSITY**

Date Mailed  
**SEP 07, 1993**

Appeal No.  
**9316986**

SS No.  
**449-96-3501**

Appellant: Claimant

Local Office No. 01

A hearing on this appeal will be held before the Hearing Examiner on

**SEPTEMBER (THIRTEENTH), 1993**  
**SEPTEMBER 13, 1993**

at **12:30 P.M. EDT**

(PLEASE BE ON TIME)

Plan to arrive 15 minutes early.

**HEARING LOCATION**  
**Baltimore U.I. Office**  
**Appeals Division - Room 511**  
**1100 North Eutaw Street**  
**Baltimore, MD 21201**

Hearing Examiner: **R.L. Frederick, ESQ.**

Mail To:  
**STANLEY P. KINZIE**  
**2909 GUILFORD AVE**  
**BALTO, MD 21218-**

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WHETHER THE CLAIMANT IS ABLE TO AVAILABLE AND ACTIVELY SEEKING WORK WITHIN THE MEANING OF SECTION 903 OF THE LAW IS ALWAYS AN ISSUE THAT MAY BE RULED ON BY THE HEARING EXAMINER.  
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Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 333-5040  
OUTSIDE OF BALTIMORE: 1-800-482-2137

APPEAL HEARING NOTICE

Claimant: STANLEY P. KINZIE

Name: TOWSON STATE UNIVERSITY 360224 Date Mailed: 9/21/93

SS No: 96-3501

Appellant: Claimant

Local Office No. 01

A hearing on this appeal will be held before the Hearing Examiner on

SEPTEMBER (THIRTEENTH), 1993 at 12:30 P.M. EDT

(PLEASE BE ON TIME)

Plan to arrive 15 minutes early.

**HEARING LOCATION**  
Baltimore, Md. Office  
Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: R. E. Frederick, ESQ.

Mail To:

TOWSON STATE UNIVERSITY 360224  
DIRECTOR OF PERSONNEL  
TOWSON, MD 21204-

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WHETHER THE CLAIMANT IS ABLE, AVAILABLE AND ACTIVELY SEEKING WORK WITHIN THE MEANING OF SECTION 903 OF THE LAW IS ALWAYS AN ISSUE THAT MAY BE RULED ON BY THE HEARING EXAMINER.

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Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, title 8, Section 909.

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

STATE OF MARYLAND  
APPEALS DIVISION - ROOM 511  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(410) 353-5040  
OUTSIDE OF BALTIMORE: 1-800-492-2137

APPEAL HEARING NOTICE

Appellant Name: P. KINZIE

Employer Name: TOWSON STATE UNIVERSITY 360224 Dept. Mail: 01

Appeal No: 88-96-3501

Appellant: Claimant

Local Office No. 01

SEPTEMBER (THIRTEENTH), 1993  
SEPTEMBER 13, 1993

at 12:30 P. M. EDT

(PLEASE BE ON TIME)

A hearing on this appeal will be held before the Hearing Examiner on

Plan to arrive 15 minutes early.

HEARING LOCATION: Office

Appeals Division - Room 511  
1100 North Eutaw Street  
Baltimore, MD 21201

Hearing Examiner: R. E. Frederick, Esq.

Mail To: TOWSON STATE UNIVERSITY 360224  
DEPARTMENT OF PERSONNEL  
301 W PRESTON ST RM 510  
BALTIMORE, MD 21201-0000

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Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 309.

## BASIC INFORMATION FOR UNEMPLOYMENT INSURANCE APPEALS HEARINGS

There are two essential requirements for Appeals Hearings:

- RECORD MADE AT HEARING** It is required that a *record* be established of the hearing and this is accomplished by making a tape recording. (Parties prohibited from making unofficial recordings).
- TESTIMONY UNDER OATH** All testimony given at appeals hearings must be given under *oath or affirmation*. Legal Counsel and other representatives not testifying need not be sworn.
- WHO PROCEEDS FIRST** In cases involving a *termination* from employment, the employer testifies first. In cases involving a *resignation* from employment, the claimant testifies first.
- CROSS EXAMINATION** After the testimony of each witness has been completed, the opposing party or his/her legal counsel or representative will be offered the right of cross examination. This procedure will be followed until all witnesses for either party (claimant or employer) have testified and then the other side will begin its case following the same format.
- DO NOT INTERRUPT** Even if you strongly disagree with what a witness says, *please do not interrupt or argue with the witness*. You will have the opportunity to ask questions of that witness *and* to present your own side of the story. An orderly and systematic hearing is to the advantage of all parties.
- DOCUMENTARY EVIDENCE** In some cases the parties may wish to present documentary evidence (such as personnel records, pay check stubs, medical certificates, etc.). These papers will be accepted as long as they are *relevant to the case*. Parties should prepare their own copies of any papers they plan to submit as evidence.
- WRITTEN DECISION AND FURTHER APPEALS** Decisions in appeal cases are written. They are issued after the Hearing Examiner has reviewed all the evidence, made findings of fact and applied the Unemployment Insurance Law to those facts. The full written decision is mailed to all interested parties as soon as possible. There is a *right of further appeal* which is fully explained on the first page of the decision.
- EUC - NOTICE** In appeals involving Emergency Unemployment Insurance Compensation (EUC, or "extended benefits") the parties are hereby placed on notice that in an adverse decision an overpayment may be created and if so the claimant shall be responsible to repay the overpayment.
- FURTHER QUESTIONS** If you have any further questions about the procedure for appeals hearings, please ask the Hearing Examiner prior to the start of the hearing.

Form DEED/OUI 370-A (Issued 5-92)

THIS IS A COPY OF THE BASIC INFORMATION FORM GIVEN TO EVERY PARTICIPANT IN A LOWER APPEALS HEARING IMMEDIATELY PRIOR TO THE BEGINNING OF THE HEARING.

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DEPARTMENT OF ECONOMIC & EMPLOYMENT DEVELOPMENT  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

TRANSCRIPT OF TESTIMONY

Heard Before R. E. Frederick Hearing Examiner

in the case of

Stanley P. Kinzie  
2909 Guilford Ave.  
Baltimore, MD 21218

S.S. #449-96-3501

Appeal #9316986

Towson State University 360224  
Director of Personnel  
Towson, MD 21204

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APPEARANCES

Stanley P. Kinzie, Claimant David Curtis

R.E. Frederick  
Hearing Examiner

---

TIME: 12:30 p.m.  
DATE: September 13, 1993  
PLACE: Baltimore, MD 21201

---

TRANSCRIBED BY: TERESA S. HINDS

## P R O C E E D I N G S

Hearing Examiner: My name is Raymond Earl Frederick. I'm an attorney. I'm also a hearings examiner for Maryland Unemployment. For the record, this is appeal number 9316986, Stanley P. Kinzie, K-I-N-Z-I-E, is the claimant who is in attendance here at the offices of DEED 12:30 p.m. on September 13, 1993. Also in attendance representing the employer is David Curtis, benefits manager for the employer. Gentlemen, you've each received a copy of the "Basic Information for Unemployment Insurance Appeal Hearings?"

Mr. Kinzie: Yes.

Mr. Curtis: Yes.

Hearing Examiner: All right. That sets forth our procedures. Have you read this thing?

Mr. Kinzie: Yes, I have.

Mr. Curtis: Yes.

Hearing Examiner: All right. Do you have any questions regarding that document?

Mr. Curtis: I don't believe so.

(Off the record.)

Hearing Examiner: We were off the tape for a couple of minutes, because one of the



administrators had to inquire about a prior case. We did not discuss this case, that correct, gentlemen?

Mr. Curtis: Correct.

Mr. Kinzie: Yes.

Hearing Examiner: All right. Where were we? We were discussing the basic information. That information tells you under Maryland law these hearings are required to be recorded. It also tells you that if you are to testify in this case, you are required to testify under oath. So raise your right hands. I will swear you both in.

(Witnesses sworn.)

Hearing Examiner: This is actually, my note says it is an employer's appeal. It is a claimant's appeal, is that correct?

Mr. Kinzie: Right.

Hearing Examiner: Right. You had been denied benefits under Section 909, where there was an interim vacation period. That's the issue in this case, is that correct gentlemen?

Mr. Kinzie: I think it is. I am not sure about 909, but I presume that's correct.

Hearing Examiner: Well, your notice refers to that and

we'll get into it. Why don't we, in this case, let the employer testify to determine employment and that sort of thing, and we will -- you have a right to ask any relevant questions as we go along.

Mr. Kinzie: Sure.

Hearing Examiner: All right. Go ahead. First, I would like to know the term that he was employed?

Mr. Curtis: Mr. Kinzie's been employed as a contractual faculty member at Towson State since August of '91, the records that we first show for contractual faculty status.

Hearing Examiner: All right.

Mr. Curtis: For the fall term of '91, August to December; for the spring term of '92, January through May; for fall of '92, from September through December; from spring, January of '93 to May of '93.

Hearing Examiner: Wait a minute. Spring?

Mr. Curtis: Spring of '93 --

Hearing Examiner: Through?

Mr. Curtis: Well, January through May of '93; and then again, the fall of '93, September through December.

Hearing Examiner: Oh, spring was January through May?

Mr. Curtis: Right.

Hearing Examiner: One through -- January through May.

Mr. Curtis: Right.

Hearing Examiner: And then is he still employed?

Mr. Curtis: Right. This fall semester of  
September through December.

Hearing Examiner: When does that start?

Mr. Curtis: September 7th officially. It goes  
to the 22nd of December, if my memory  
is correct.

Mr. Kinzie: That's correct.

Hearing Examiner: Fall semester, is that right?

Mr. Curtis: Right.

Hearing Examiner: Okay. All right. And has he returned  
to work?

Mr. Curtis: Yes, sir.

Hearing Examiner: Okay. Go ahead.

Mr. Curtis: And just basically, as in other cases  
of similar nature, when there is breaks  
between semesters or the reasonable  
assurance issue comes up regarding new  
semester coming up, if the person is  
going to have a reasonable assurance of  
re-employment, our position has been,  
especially in the planning stages, the  
individual is consulted about the

availability of teaching in the fall granted; and for the record, as I have said many times before in other cases here, that it is not a guarantee. I will never say it is a guarantee but discussion --

Hearing Examiner: A reasonable assurance is not a guarantee.

Mr. Curtis: Yes -- discussion about, we would like you to work for us again in the fall. If there is not enough students, you won't be, but I think the record also shows --

Hearing Examiner: You notified the Department? There is a requirement that the Department is notified, DEED, is notified of those who are supposed to return to work.

Mr. Curtis: We normally contact, through our representative at the department of personnel, if there is any questions about non-return or if there is return to less than we had expected initially.

Hearing Examiner: All right, sir.

Mr. Curtis: So the main issue is just one of between summer -- or I should say between the spring and fall semesters.

Hearing Examiner: Right.

Mr. Curtis: And there was a reasonable assurance that Mr. Kinzie would be returning in the fall semester.

Hearing Examiner: He is in the educational department, right?

Mr. Curtis: Philosophy and religion --

Hearing Examiner: Faculty member.

Mr. Curtis: Right, faculty, correct.

Hearing Examiner: All right, sir. Mr. Kinzie.

Mr. Kinzie: Okay. I think I have no large objections to what was said. I would have thought that the first semester that I worked, which began in August -- began in September of '91 instead of August --

Hearing Examiner: That's all right. That's not necessarily relevant. We are talking about the current year.

Mr. Kinzie: A small point. Also, it was said that I was approached and told that they would like me to return, that isn't precisely true. Professor Marungy approached me and asked me if I would be interested in returning, and I said yes. But I received no -- I received no notice that I would return or could be expected to return, until receiving

a letter in the mail which I have with me, which arrived on the 12th of August. I can give you this --

Hearing Examiner: All right, sir.

Mr. Kinzie: -- if you are interested in seeing it. This was the first thing that was said by way of an assurance that I would return.

Hearing Examiner: I see. All right. Do you want this placed in the record?

Mr. Kinzie: Sure.

Hearing Examiner: All right. Are you familiar with that letter?

Mr. Curtis: I've got a copy of it. Is it the same thing?

Mr. Kinzie: I think that's --

Hearing Examiner: Same thing.

Mr. Kinzie: Right.

Hearing Examiner: I want to place one or the other in the record.

Mr. Curtis: Do you want to keep yours?

Mr. Kinzie: Sure. I'll keep the original and you can put the copy in.

Hearing Examiner: Fine. Thank you. I'll mark this Claimant's Exhibit. Go ahead, sir.

Mr. Kinzie: Okay. And then there are two other issues. There seems to be some

confusion about the dates. I'm not sure in what order you want to take these up.

Hearing Examiner: Well, I'd like to know when the spring semester ended in '93?

Mr. Kinzie: Okay. My final exam was given on May 21st.

Hearing Examiner: '93.

Mr. Kinzie: '93. I was still grading on the 22nd, which is a Saturday, and I submitted the grades on the 22nd, so actually the 22nd was my last day.

Hearing Examiner: All right. The fall semester started 9/7/93. Go ahead.

Mr. Kinzie: Right. However, in the notice that benefits had been denied, benefits were apparently denied for the week ending the 22nd. It's a little obscure from the wording, but there seems to be no other way to make sense of the amount that they came up with

Hearing Examiner: The week beginning -- each week beginning --

Mr. Kinzie: The wording -- and there is no week beginning on the 22nd.

Hearing Examiner: And they are wrong. Yes. That week ending, actually, that should have

been week ending there.

Mr. Kinzie: But, in fact, I was still employed during that week and working during that week. So that is one issue.

Hearing Examiner: Week ending May 22, and you were -- okay. But then when they go back, they go back to the first Sunday, here, in the Agency. They always start everything on a Sunday.

Mr. Kinzie: So it should have been --

Hearing Examiner: Up in the first part, it would have been the week ending May 22, and then the penalty was for the week beginning May 16th.

Mr. Kinzie: Except that if you try to work out the numbers, that doesn't work out. In fact, I was denied the benefits for the week ending the 22nd as well.

Hearing Examiner: Well, that is the same as the week beginning. That's confusing. A lot of people get confused. The week beginning May 16th and ending on May 22nd, so you can describe that week either day.

Mr. Kinzie: Okay, but my point is, I was working during that week.

Hearing Examiner: I understand that.

Mr. Kinzie: And the \$1708 in overpayment, must have



included the payment for that week.

Hearing Examiner: I don't understand about overpayments.  
Do you mean collecting?

Mr. Kinzie: I had filed --

Hearing Examiner: You filed back on June 28th.

Mr. Kinzie: -- during the summer. I filed during  
the summer and had collected during  
the summer. Then I received a notice  
of overpayment.

Hearing Examiner: I see. Well, I'm not hearing that  
part of it. That may come up on  
another case.

Mr. Kinzie: Okay, but the grounds for the  
overpayment are the same grounds  
as we're --

Hearing Examiner: I know. We'll hear one at a time if  
they are the same.

Mr. Kinzie: Okay.

Hearing Examiner: At least that's all I have before me.

Mr. Kinzie: Okay. I guess, when I wrote the  
request for an appeal, I was thinking  
that this was a single issue, because  
depending on --

Hearing Examiner: Well, sometimes they'll put it in in  
two cases, tandem. We'll hear two  
in a row; but not all the time.

Mr. Kinzie: I'm a little confused, but --

Hearing Examiner: All right. You've got two issues, sir. If you have two cases in a court of law, you go one day. You may go the next week on a second case.

Mr. Kinzie: Yes, what are the two issues?

Hearing Examiner: The issue, one is whether you have been overpaid or not. The other one is whether you were entitled to benefits. And we are on the entitlement right now.

Mr. Kinzie: But to me that seems like one issue. I mean, the answer to whether I was entitled will decide both.

Hearing Examiner: There are a lot of reasons why these issues have to be separated, sir.

Mr. Kinzie: Okay.

Hearing Examiner: Not in your particular case.

Mr. Kinzie: So we are only on the entitlement.

Hearing Examiner: We're on entitlement; that's correct. That's the only issue we have here.

Mr. Kinzie: Okay. Well --

Hearing Examiner: I'm sorry if that confused you, but they have their own reasons to do it.

Mr. Kinzie: That may be.

Hearing Examiner: We have to administer the law the way it is written, sir.

Mr. Kinzie: So then on the entitlement issue,

what I want to say is, it is not literally treated, I was told that they would like me to return, and in fact I received no assurance either oral or written of returning until I received the letter, which a copy of which has now been entered into the record.

Hearing Examiner: I see.

Mr. Kinzie: The letter is dated the 5th, but it arrived in an envelope postmarked the 10th. The envelope is here, and it in fact arrived at my house on the 12th. I continued to file up through that week, the week ending the 14th. I continued to search for other work, and to file claims. I haven't filed since. I acknowledge that I have reasonable assurance from that point on, but it doesn't seem to me that I had any sort of assurance, really, until that point.

Hearing Examiner: Except that was the type of job that you had. Didn't you in previous years take the summer vacations and return each fall?

Mr. Kinzie: Well, I had done that once in the past.

Hearing Examiner: We don't have too many teachers do this. We have bus drivers and that

sort of people that attempt to get around the reasonable assurance.

Mr. Kinzie: But I'm a contractual faculty.

Hearing Examiner: I understand that.

Mr. Kinzie: I've been told each -- I have been told that there is no assurance. Professor Fukes, when he offered me the spring job, made a particular point of saying that there was contingency about enrollment and amount funding, that he could not say that it was an assurance.

Hearing Examiner: All right.

Mr. Kinzie: And so, I mean, I question the reasonable assurance part. Also, each time that I have received a contract, the contract says that it's a temporary contract. It is not an extended.

Hearing Examiner: Are you saying this April 5th paper is a contract here?

Mr. Kinzie: No, but I have a copy of the contract. The copy came with the August 5th letter. I received the -- and the letter, in fact, refers to that.

Hearing Examiner: Well, you have testified to it. But it is for the fall semester and the spring semester?

Mr. Kinzie: No, it's for only one semester.

Hearing Examiner: Oh, for one semester, for the fall?

Mr. Kinzie: For the fall semester.

Hearing Examiner: Okay.

Mr. Kinzie: And then there is a third point that I also wanted to mention, and that is that I twice spoke to the department chair, Professor Marungy requesting a teaching assignment in the summer and wasn't able to get one. So it is not as if I were signing on at the beginning for a year's worth, which will be compressed into nine months. I have each semester to seek work for the following semester, and I sought work for the summer term as well, but wasn't able to get it. So my situation, as a semester by semester contractor is somewhat different from that of a permanent regular employee, and different at the insistence of Towson State. And in each letter that comes to me, it points out this is a temporary --

Hearing Examiner: Assignment.

Mr. Kinzie: This is a temporary assignment.

Hearing Examiner: All right.

Mr. Kinzie: So I question the assurance point.

Hearing Examiner: Okay. Let's hear from Mr. Curtis on that. What do you say?

Mr. Curtis: I just want to just ask maybe a couple of questions here. Mr. Kinzie, was your name published in the fall schedule book this year, when they prepared it in the summertime?

Mr. Kinzie: It may have. It may have been.

Mr. Curtis: Unfortunately, I don't have a copy of it. Usually, I have a copy. But again, I am not trying to dispute anything that Mr. Kinzie said. It is the fact of the matter that contractual faculty go from semester by semester. The planning that goes on, the exact words may not be, we need you to work or what, but the planning for -- will Mr. Kinzie be available to teach these courses if we have the students, and again, I just want to stress that that still is a factor. But in years past, it has never been a problem, and they were planning on him again in the fall. He did get his contract in August to confirm what had been previously, at least -- I have a copy of a temporary request that I don't see any signature of Mr. Kinzie

on it, but it shows that the Department had, in April, planned on Mr. Kinzie being back in the fall. I don't know if you've seen those or not. I've got an extra copy.

Mr. Kinzie: I haven't seen that.

Mr. Curtis: You can have that one if you like. I hope I'm not violating anything between departments.

Hearing Examiner: No, not at all.

Mr. Curtis: I would like to offer that one, just again, as evidence that again the planning stages went on during the spring, even though, and again, I am not debating you did not get a statement saying you are definitely going to come back in the fall. I'm not --

Hearing Examiner: The term is reasonable assurances.

Mr. Kinzie: I didn't get a statement supplying me -- I didn't get a statement saying, we expect that you can come back, or --

Mr. Curtis: Just the fact that we were planning on you coming back, and not planning on, I should say, that they were -- in their plans for the fall, you were entered into their plans, regardless

of statements that you may not have received as far as making that iron clad. It was not.

Mr. Kinzie: Well, I understand that it is not iron clad, and I understand that iron clad isn't the standard, but as I read the law, which I looked up using Lexus, the issue is whether I had a reasonable assurance, whether there was an assurance to me. The internal planning of the department is one thing. The assurance to me is another thing. I think that if Towson State --

Hearing Examiner: Are you saying, even though you have returned under reasonable assurance or are now employed, that you would have collected unemployment for the summer? Are you stating that?

Mr. Kinzie: I filed claims for unemployment up until the time when the letter and contract was received. I felt that my assurance of returning began when that event occurred. I have not filed since. I don't feel that I'm without a reasonable assurance now, or that I was without a reasonable assurance from that point.



Hearing Examiner: I believe it is the employer's position that there were reasonable assurances that you would be returning as you had in the past.

Mr. Kinzie: Only one -- I had only taught two years previously, so there was only one summer interim. And I have noticed, I noticed in the book store this semester, that a course had been canceled. So I'm not sure that it's never -- I'm not sure that cancellation for want of funding is not an event that occurs.

Hearing Examiner: Was he listed as part of the faculty somewhere?

Mr. Curtis: He's a faculty member. It's called adjunct faculty. It is technically contractual faculty. It's not regular subsidized benefit. It goes semester by semester as the load is there.

Hearing Examiner: I see.

Mr. Curtis: There has been a lot of reliance over the years on contractual faculty members, for some reasons, obviously, with the benefit costs involved, and just not having regular state pens, if you will, positions.

Hearing Examiner: I understand.

Mr. Curtis: They've been utilized quite a bit throughout the institution.

Hearing Examiner: Okay.

Mr. Curtis: May I say one more thing?

Hearing Examiner: Sure, you can say much more if you want. Whatever you want to say.

Mr. Curtis: I just want, for the record, and I'm not trying to split hairs here. Mr. Kinzie mentioned about being -- I think he used the term contractor. I just want to stress that Mr. Kinzie is considered to be an employee of Towson State, contractual, but nonetheless an employee, not an individual independent contractor.

Mr. Kinzie: Sure.

Mr. Curtis: I just wanted to make sure --

Mr. Kinzie: But I have a semester by semester --

Mr. Curtis: Well, but still as an employee.

Mr. Kinzie: Okay.

Mr. Curtis: Okay. Again, I'm not trying to split hairs.

Hearing Examiner: Okay. You can go ahead, sir.

Mr. Kinzie: Well, maybe this is just a sort of background point, but I was originally, before going to work at Towson State, I had been working as a computer

programmer. I got into trouble as a computer programmer because of the collapse of Wang, and I had worked only on Wang hardware. In fact, at that time, I was collecting unemployment, and wasn't required even to look for teaching positions. I did that as a kind of gratuitous thing. I'm now finding that by having done that, my position is worsened and that that's an irony, I think. Also, there's an irony, a little bit, in that the University seems to want to have a bit of both ways. They want to say in their letter each term, this is a temporary offer. You are a temporary employee being hired for one semester. They also want not to have an obligation to find work for you for the summer session, and they want to say that you do have a reasonable assurance --

Hearing Examiner: Yes, that's what it turns on.  
Mr. Kinzie: -- of returning. And that seems --  
Hearing Examiner: Or a reasonable -- the courthouse is built over the word reasonable.  
Mr. Kinzie: Right. Sure. Sure.  
Hearing Examiner: Okay. Is there anything further,

gentlemen?

Mr. Kinzie: Well, I guess just to conclude, the only thing that was said to me directly as regards the fact of my returning was said in the letter I received on August 12th, nothing before that. And that's my concluding remark.

Hearing Examiner: All right.

Mr. Kinzie: And then, there are also the other issues that we didn't reach, regarding the dates and the overpayment.

Hearing Examiner: Right. You can discuss that with them after you get the decision here.

Mr. Kinzie: Okay.

Hearing Examiner: Okay. All right. Mr. Curtis, anything further?

Mr. Curtis: I don't mean to keep this ongoing, but you mentioned about dates. I mean, I do have a copy of what the --

Hearing Examiner: That's not before me, sir.

Mr. Curtis: Okay.

Hearing Examiner: All right. The payment dates are not before me.

Mr. Curtis: I couldn't remember if it was the dates of the contracts and such.

Hearing Examiner: Oh, the dates of the contracts.

Mr. Curtis: Right. Yes.

Hearing Examiner: Oh, I thought you were talking about the dates that he got paid or did get unemployment.

Mr. Curtis: No, I think there's a confusion --

Hearing Examiner: Go ahead.

Mr. Curtis: There's a confusion with the dates in the unemployment department. This is what shows as far as the contract dates, the official dates that our system, the payroll system shows.

Mr. Kinzie: Okay. So even in your system, it shows that my last date of work --

Mr. Curtis: Well, it shows the contract ending date was 5/22.

Mr. Kinzie: Which was also, in fact, my last day of work.

Mr. Curtis: I don't know if that is helpful for your records or not.

Hearing Examiner: Well, if you'd like to place it in the record, we will look at it.

Mr. Curtis: Okay.

Hearing Examiner: I will make that Employer's Exhibit. Employer's Exhibit number 1 was this part-time faculty temporary appointment request. I marked that number 1. I mark this document you just described as Employer Exhibit number 2.

Mr. Kinzie: And then also perhaps going in as my exhibit was the photocopy of the letter.

Mr. Curtis: The letter, right.

Hearing Examiner: And these are the contract dates in this Exhibit number 2, and it is so hard to read these kinds of things when you first come up on them, but these were -- what is this? Can you explain this, sir?

Mr. Curtis: Start and ending date of the contractual agreement, August 10th of '91 through December 31.

Hearing Examiner: Oh, there is '91. There is '92.

Mr. Curtis: '92.

Hearing Examiner: '93.

Mr. Curtis: Now, the fall, September '93 through December '93 has not been entered, because I understand the contract has not yet either been returned or processed as of yet.

Mr. Kinzie: It has been returned.

Mr. Curtis: They haven't processed it as of yet.

Hearing Examiner: Okay. Anything further?

Mr. Curtis: No.

Hearing Examiner: Okay. Are you filing -- well, you are working now.

Mr. Kinzie: I'm working now, right.

Hearing Examiner: Okay. We'll get a decision out in seven to 14 days. It will be in writing. It will be appealable, either or both parties, and appeal procedures will be noted on that form. Okay.

Mr. Kinzie: Thank you.

Hearing Examiner: All right, gentlemen. Thank you very much for a very informative session here, and good luck to you.

Mr. Kinzie: Thanks.

Hearing Examiner: Thank you, gentlemen. I'm going to conclude now.

(Recess.)

TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the Petition of Stanley P. Kinzie, Appeal No. 9316986, heard on September 13, 1993, were recorded by means of audio tape.

I do hereby certify that the foregoing pages constitute the official transcript of said audio taped proceedings to the best of my ability in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 19th day of January, 1994.

*Teresa S. Hinds*

---

Teresa S. Hinds, Transcriber



COPIES FOR  
Appeal

 **TOWSON**  
**STATE UNIVERSITY**  
Towson, Maryland 21204-7097

Provost  
(410) 830-2125  
FAX (410) 830-3129

August 5, 1993

Mr. Paul Kinzie  
2909 Guilford Avenue  
Baltimore, MD 21218

Dear Mr. Kinzie:

Upon the recommendation of Dean Chappell and Dr. Murungi, I am pleased to offer you a temporary part-time position for the 1993 fall semester.

Enclosed is a temporary faculty member's contract which requires your signature. Your attention is directed to item 4 "Additional Terms" of the contract. This portion contains the University's policy with respect to employment elsewhere. Your signature indicates the information in Items 1 through 5 of the "Temporary Faculty Member's Contract" is correct, and that you are in compliance with the University's Policy stated in Item 4.

Also enclosed is a SPECIAL PAYMENTS PAYROLL AUTHORIZATION form (311 form). Part I, the front side of the form, has been completed by our office. Part II, the portion regarding "Employee Withholding Exemption Certificate" must be completed and signed; the State of Maryland requires that you complete the bottom portion of this form regarding "Equal Opportunity Employment." This information will be used for statistical purposes only by authorized personnel. You will also find enclosed an I.D. card to be used on campus where required.

Faculty teaching one section will receive their salary in two payments: 10/15 and 12/10.

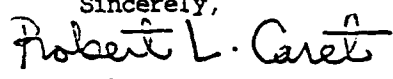
Faculty teaching two sections may request four payments, and their paychecks should be received on 10/1, 10/29, 11/26 and 12/24..

Faculty teaching at least three sections may elect bi-weekly payments and should receive their paychecks on 10/1, 10/15, 10/29, 11/12, 11/26, 12/10 and 12/24.

If you wish your paycheck on dates other than those indicated above, please advise when you return your signed contract.

Contracts returned late will result in delayed payments. Paychecks will be mailed directly to the home address indicated on the 311 form. Any changes in address should be reported to this office.

If the terms of employment are satisfactory to you, I shall appreciate your signing and returning the temporary contract, along with the 311 form, to the Office of Academic Affairs at your earliest convenience.

Sincerely,  
  
Robert L. Caret  
Provost

APPEALS DIVISION  
Exhibit No. 1  
For Identification Only

C: Department Chairperson

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# Towson State University

## PART-TIME FACULTY (Temporary) APPOINTMENT REQUEST

TO: Dean Annette Chappell Date 4-22-93  
(Divisional Dean)  
 FROM: Dr. John Murungi Date Philosophy  
(Chairperson) (Name of Department)

1. It is requested that Paul Kinzie be appointed as Lecturer, Senior in the Department of Philosophy  
(Rank: e.g., Ass't. Prof., Instructor, etc.)  
 Effective September 7, 1993 for a period of 4 months  
(Date)  
Fall Semester  
(Fall Semester—Spring Semester—Ten Months) *OK*  
 A salary of 2,000.00 is recommended per section. Total Salary 4,000.00  
(Amount)

**Teaching Assignment:**  
 Title of course/s Introduction to Philosophy  
 Course number and section/s Phil.101,011, 015  
 Credit hours 060 List contact hours if different from credit hours \_\_\_\_\_

2. Please complete one of the following:  
 This is an emergency position from the Dean's pool.  
 This is a replacement for \_\_\_\_\_ who has  
 resigned; \_\_\_\_\_ retired; \_\_\_\_\_ been awarded a Sabbatical; \_\_\_\_\_ received a Leave.

3. Teaching load will be 1/4; 1/2; 3/4; full.  
 4. Current mailing address: 2909 Guilford Ave, Baltimore, MD 21218  
 Telephone: 243-2450 Social Security No. 449-96-3501

5. Professional Preparation:

	Institution	Year Awarded	Major
<small>(Circle one)</small> <u>B.A. B.S.</u>	<u>The University of Connecticut</u>	<u>1975</u>	<u>English</u>
<u>M.A. M.S.</u>	<u>The Johns Hopkins University</u>	<u>1976</u>	<u>Philosophy</u>

Doctoral degree \_\_\_\_\_  
 \_\_\_\_\_ Ph.D. \_\_\_\_\_ Ed.D. \_\_\_\_\_ Other

6. List faculty member's regular employment: \_\_\_\_\_  
 If employed by a State college other than Towson, list title of college employee, courses taught per semester, credit hours and approximate number of students in each course:

Courses Taught	Credit Hours	Number of Students in Course

7. Transcript: \_\_\_\_\_ Included \_\_\_\_\_ Will be forwarded to the Dean's Office  
 8. Credentials: \_\_\_\_\_ Included \_\_\_\_\_ Will be forwarded to the Dean's Office  
 9. Experience:

	Number of Years	Institution
Elementary or Secondary School _____		
College or University (full time) _____		
College or University (Graduate Assistant) _____		

10. The following information is needed to complete the data card:

<b>Sex</b>	<b>Race</b>	<b>Citizen of U.S.</b>	<b>Date of Birth</b>
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<input checked="" type="checkbox"/> Caucasian <input type="checkbox"/> Afro-American <input type="checkbox"/> Native American	<input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Other (All foreign nationals)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <u>8-13-51</u>

TO: Vice President for Academic Affairs  
 a.  approval  
 Remarks: \_\_\_\_\_  
 b.  disapproved  
 Remarks: \_\_\_\_\_

APPRAISAL DIVISION  
 Exhibit No. 1  
 Per Identification Only

*John Murungi* 48  
 \_\_\_\_\_  
 Dean

W-Z0137 - SECURITY - YOU MAY NOT UPDATE ON THIS SCREEN  
L16 ASSIGNMENTS LIST KINZIE, S. PAUL

SCREEN: \_\_\_ ID: 449963501 JOB: \_ CODE: \_\_\_ USER: 007 FY: \_\_\_ POS: \_\_\_\_\_

LINE: \_\_\_

LN	J	ASN	PR	LK	POS	P	START	END	EV	FTE	CA	CTR	REG	PAYRATE	ANNUAL	PR
B	NO.	LK	FL	NO	C	DATE	DATE	SS		ID	PRD	HRS		SALARY	AS	
01	L	004		Y	000001	N	081091	123191	AB	0.00	B	26	71.00	39.29	7072.00	
02	L	008		N	000001	N	012592	053192	BB	0.00	B	26	71.00	39.29	1768.00	
03	L	012	004	Y	000001	N	090892	122292	BB	0.00	B	26	71.00	39.29	1768.00	
04	L	016	012	N	000001	N	012793	052293	BA	0.00	B	26	71.00	39.29	1768.00	

APPEALS DIVISION  
*EP* Exhibit No. 2  
For Identification Only

TOTAL PAGES: 01 THIS PAGE: 01 NEXT PAGE: \_\_

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## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

STANLEY P. KINZIE  
2909 GUILFORD AVE  
BALTO, MD 21218-

SSN #449-96-3501  
Claimant

vs.

TOWSON STATE UNIVERSITY 360224  
DIRECTOR OF PERSONNEL  
TOWSON, MD 21204-

**Employer/Agency**

Before the:

**Maryland Department of Economic and  
Employment Development  
Appeals Division**  
1100 North Eutaw Street  
Room 511  
Baltimore, MD 21201  
(401) 333-5040

Appeal Number: 9316986  
Appellant: Claimant  
Local Office: 01 / Baltimore

September 15, 1993

**For the Claimant: PRESENT**

**For the Employer: PRESENT, DAVID CURTIS**

**For the Agency:**

### **ISSUE(S)**

Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

### **FINDINGS OF FACT**

The claimant was employed from August 10, 1991 through December 31, 1991, from January 25, 1992 through May 31, 1992, from September 8, 1992 through December 22, 1992, and from January 27, 1993 through May 22, 1993 as a faculty member for Towson State University. Each of the described periods of employment were fall and spring semesters.

The claimant has returned to work again as a contractual, faculty member for the fall semester beginning September 7, 1993.

Each of the periods listed before represent semester periods indicating that the claimant had returned to his position after the summer of 1992 break and the summer of 1993 break. The claimant was

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listed as a faculty member in the school's fall semester book and had indicated that they were planning to have him return to work in the fall, 1993 which he has done.

The claimant had reasonable assurances that he would be returning to work in fall, 1993.

### CONCLUSIONS OF LAW

The Maryland Code Labor and Employment Article, Title 8, Section 909 provides that an individual is not eligible for benefits based on covered employment performed for an educational institution in an instructional, principal administrative, or research capacity for any week of unemployment that begins during a period of between two successive academic terms provided the individual performs the covered employment in the first term and that there is reasonable assurance that the individual will perform the covered employment in the second term.

### EVALUATION OF EVIDENCE

In the instant case, the evidence demonstrated that the claimant, in 1992 and 1993, had returned to work at the end of the summer breaks. There was no evidence submitted that the claimant was told that he would not be returning for the fall semester of 1993 and because of past practices, the claimant had reasonable assurances that he would have been returning to work in the fall, 1993 which is the case.

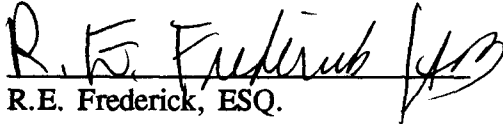
The claimant attempted to show that he did not receive a contract for the fall, 1993 semester until August, 1993; however, there was enough other activity which would establish a reasonable assurance that he would be returning to work.

It should also be noted that Title 8, Section 909 does provide for retroactive benefits in the event that a claimant was not given an opportunity to perform the covered employment during the next successive term.

### DECISION

The determination of the Claims Examiner is affirmed.

The claimant had reasonable assurance of continued employment under the provisions of the Maryland Code, Labor and Employment Article, Title 8, Section 909 and is denied benefits from the week beginning May 16, 1993 and until he further meets the requirements of the Law.

  
R.E. Frederick, ESQ.  
Hearing Examiner

**Notice of Right to Petition for Review**

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by September 30, 1993.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: September 13, 1993

gr/Specialist ID: 01041

Seq. No.: 002

Copies mailed on September 15, 1993 to:

STANLEY P. KINZIE  
TOWSON STATE UNIVERSITY 360224  
LOCAL OFFICE #01  
DAVID CURTIS

2909 Guilford Avenue  
Baltimore, MD 21218  
September 29, 1993

RECEIVED  
OCT 1 1993

Board of Appeals, Room 515  
Dept. of Economic and Employment Development  
1100 North Eutaw Street  
Baltimore, MD 21201

Dear Sir or Madam:

Thank you for sending me the record of my Unemployment Insurance Appeals Decision, appeal number 9316986. I wish to appeal this decision.

I am now teaching at Towson State University on Tuesdays and Thursdays. For this reason, I request that the appeal be scheduled for a Monday, Wednesday, or Friday.

Thank you for your time and attention.

Yours sincerely,

*Stanley Paul Kinzie*

Stanley Paul Kinzie  
449-96-3501

T

STANLEY P. KINZIE  
2909 GUILFORD AVE  
BALTO, MD 21218-

October 18, 1993

CLAIMANT:  
STANLEY P. KINZIE

APPEAL NO: 9316986

EMPLOYER:  
TOWSON STATE UNIVERSITY 360224

S. S. NO: 449-96-3501

APPELLANT: Claimant

Appellant:

The Board of Appeals has received an appeal in this case. The Board may deny a petition for review, it may decide the case on the record already established, or it may grant a hearing. You will be notified of the Board's action.

The Board's action may change the result of the Examiner's decision. If the Claimant has been previously disqualified from benefits, that disqualification may be affirmed, modified or reversed.

If the Claimant has been granted benefits, a partial or total disqualification may be imposed by the Board's action. If this occurs, the Claimant may be required to pay back some or all of the benefits received.

It is the duty of all parties to keep the Board of Appeals notified of their current address. Please write to the Board at Room 515, 1100 North Eutaw Street, Baltimore, MD 21201 if your address changes.

Paul G. Zimmerman  
COUNSEL

54



Lynn M. Washlett  
333-4813

John Fredman

539 -

4220

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer*  
Governor  
*Mark L. Wasserman*  
Secretary

*Board of Appeals*  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: (410) 333-5032

**- DECISION -**

Claimant:  
STANLEY P. KINZIE  
2909 GUILFORD AVE  
BALTO, MD 21218-

Employer:  
TOWSON STATE UNIVERSITY 360224  
DIRECTOR OF PERSONNEL  
TOWSON, MD 21204-


Decision No.: 1272-DR-93  
Date: November 5, 1993  
Appeal No.: 9316986  
S.S. No.: 449-96-3501  
L.O. No.: 01  
Appellant: Claimant

Under §8-510 and 8-806 of the Labor and Employment Article, the Board of Appeals denies your petition for review in this case. Since an appeal has not been allowed, the decision of the Hearing Examiner will remain in effect. This is the final decision of the Department of Economic and Employment Development. Any further appeal should be made to the circuit court.

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal to court expires on December 5, 1993.

  
Donna P. Watts, Associate Member

  
Hazel A. Warnick, Associate Member

pgz  
Copies mailed to:  
STANLEY P. KINZIE  
TOWSON STATE UNIVERSITY 360224  
TOWSON STATE UNIVERSITY 360224  
Unemployment Insurance - #01  
HEARING EXAMINER'S DECISION FILE

55

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207**

Stanley Paul Kinzie

Docket: .....

vs.

Folio: .....

MD. Dept. of Econo. & Employ.  
Development

File: 93337061/CL173470

Date of Notice: 2-8-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 27th day of January  
Nineteen Hundred and ninety-four, I received from the Administrative  
Agency, the record, in the above captioned case.

**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

**MARYLAND RELAY SERVICE VOICE 1-800-735-2258**



**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207**

Stanley Paul Kinzie

Docket: .....

vs.

Folio: .....

MD. Dept. of Econo. & Employ.  
Development

File: 93337061/CL173470

Date of Notice: 2-8-94

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**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

**MARYLAND RELAY SERVICE VOICE 1-800-735-2258**



Circuit Court for Balto. City  
111 N. Calvert St. Rm. 462  
21202

Stanley P. Kinzie  
2909 Guilford Avenue  
Baltimore, Maryland 21218

Circuit Court for Balto. City  
111 N. Calvert St. Rm. 462  
21202

Lynn M. Weiskittel  
Asst. Atty. General  
Michele McDonald, Staff Atty.  
217 E. Redwood St.- 11th Fl.  
Baltimore, Maryland 21202

STANLEY P. KINZIE  
Appellant,

v.

VALERIE D. BRYAN

and

BOARD OF APPEALS,  
Department of Economic and  
Employment Development,  
Appellees.

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
NOV 20 A 7 57  
CIVIL DIVISION  
\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Civil Action No.  
93337061/CL173470  
\*  
\*

RESPONSE TO PETITION

The Board of Appeals (the "Board"), Department of Economic and Employment Development, in response to Appellant's Petition states:

1. The Board intends to participate in the action for judicial review.
2. The Board denies the allegations in the Petition.
3. Section 8-512(d) of the Labor and Employment Article, Maryland Code, confines the jurisdiction of the court to questions of law, and this is not a trial de novo.
4. The findings of the Board are conclusive because they are supported by substantial evidence, and there is no error of law.

WHEREFORE, the Board requests its decision be AFFIRMED.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

*Lynn M. Weiskittel / de*  
Lynn M. Weiskittel, Asst, Atty. General  
Rachel Nunn, Staff Attorney  
Michele McDonald, Staff Attorney  
217 E. Redwood St. - 11th Floor  
Baltimore, MD 21202  
(410) 333-4813

CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that on this 17th day of December, 1993, a written notice of this appeal and a copy of this Response were mailed to Stanley P. Kinzie, 2909 Guilford Ave, Balto MD 21218 and to Towson State University 360224, Director of Personnel, Towson MD 21204.

*[Signature]*

Attorney

*[Handwritten mark]*

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

93337061

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CIVIL DIVISION

CL 173470

IN THE CIRCUIT COURT FOR BALTIMORE CITY  
PETITION OF STANLEY PAUL KINZIE  
2909 Guilford Avenue  
Baltimore, MD 21218

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE MARYLAND DEPARTMENT OF ECONOMIC &  
EMPLOYMENT DEVELOPMENT  
1100 North Eutaw Street  
Baltimore, MD 21201

\* CIVIL  
\* ACTION  
\* No. \_\_\_\_\_

IN THE CASE OF Decision Number 1272-DR-93,  
to Appeal Number 9316986, and in the  
September 15, 1993 Decision of Appeal  
9316986.

The Petition.

1. I, Stanley Paul Kinzie, of 2909 Guilford Avenue, Baltimore, Maryland 21218 request judicial review of Decision Number 1272-DR-93, to Appeal Number 9316986, of the Maryland Department of Economic & Employment Development. Decision 1272-DR-93 is a denial of an appeal to the substantive decision in Appeal 9316986. The substantive decision occurred on September 15, 1993, after a hearing on September 13, 1993. I request as well judicial review of the decision of September 15, 1993.

2. I was a party to each of the named agency proceedings.

The Questions.

3. This case presents two questions--one a factual question regarding dates of employment, and one a legal question regarding the interpretation of "reasonable assurance" in the Maryland Code, Labor and Employment Article, Title 8, Section 909.

The Factual Question.

4. I was a contractual faculty member at Towson State University (in the Philosophy Department) during the Spring Semester of 1993. Towson State University is located at Towson, Maryland 21204. I was assigned only one course, although I had requested more than one. My contract ended on May 22, 1993, and I in fact worked on that day.

5. I filed an unemployment claim for the week ending May 22, 1993, reporting my employment and earnings during that week. The claim was paid, in the amount of \$147, but it was later disallowed as an overpayment.

copy sent

D.E.

6. The claim was disallowed on the ground that the week ending May 22, 1993 was part of an interim period between periods of regular educational employment. The ground is mistaken as a matter of fact, since the week in question was a week of educational employment.

7. As far as I have been able to determine, there is no dispute regarding the facts. Apart from the initial mistake (which I believe was simply a mistake about dates), I am unaware of any assertion that I did not work during the week in question. The matter of the dates was not contested by Towson State University at the Appeal hearing on September 13, 1993.

8. The matter of the dates was not corrected in the Decision of September 15, 1993 because the Hearing Examiner declined, at the September 13 hearing, to consider the question. He claimed that it was not before him. However, the issue had been raised in my letter of August 12, 1993, which stated the issues on which I wished to appeal. That letter was in the possession of the Hearing Examiner. Moreover, a notice had been sent to me stating that the Examiner had a wide authority, embracing even questions that no party had raised.

9. For these reasons, I believe that the undisputed error regarding dates should have been considered and corrected. I request a judicial determination that the \$147 unemployment payment for the week ending May 22, 1993 should not be counted as an overpayment. I request also an appropriate injunction or other relief.

The Legal Question.

10. I twice sought a Towson State teaching assignment for the Summer 1993 term. None was forthcoming.

11. I was denied unemployment compensation for the Summer of 1993, on the ground that I had a "reasonable assurance" under Title 8, Section 909, of returning to work in the Fall.<sup>1</sup> I did

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<sup>1</sup>By my calculation, \$2,727.43 is at issue. This amount has four components. First, there is the \$147 which was paid for the week ending May 22, 1993. Second, there is \$1,561 which was paid for the weeks ending May 29, June 5, June 12, June 19, June 26, July 3, and July 10, 1993. Like the \$147, the \$1,561 was later disallowed as an overpayment. Third, there is \$892, which represents the weeks ending July 17, July 24, July 31, and August 7, 1993. I filed claims for these weeks, in a timely fashion, but the claims were not paid. Fourth, there is \$127.43, which

have some warranted expectation of returning. The broad legal question, therefore, is whether the warranted expectation rose to the level of a reasonable assurance.

12. The relevant standard of interpretation was stated by the Maryland Court of Appeals in *Sinai Hospital of Baltimore, Inc. v. Department of Education and Training*, 309 Md. 28 (1987). The Court stated "the principles that [unemployment compensation] laws should be read liberally in favor of eligibility, and that disqualification provisions are to be strictly construed." *Id.* at 40.

13. In this case, I received no explicit assurance that I would return until I received a letter to that effect and a contract on August 12, 1993. I think that this event constituted a reasonable assurance, and I have filed no unemployment claims since that time.

14. My warranted expectation of returning was founded on having been asked about returning, and on having expressed my probable willingness to do so. At some point during the summer, perhaps before August 12, I also made one preparation to return: the ordering of textbooks. It is also possible (as the University has hinted) that my name was included in a Fall 1993 course guide, but I am uncertain on this point. On one previous occasion (the Fall of 1992), I had returned after a summer recess.

15. In the Fall 1992 semester (and thus after my one previous return from a summer recess), I was warned by Prof. Wolfgang Fuchs, who was then handling the recruitment of contractual faculty for the Philosophy Department, that budgetary and enrollment shortfalls were real dangers, and that the possibility of returning for the next semester was contingent on sufficient budget and enrollment. This conversation occurred against a background of considerable news of budgetary difficulty. Nothing has been said to me to the effect that such dangers have abated. News reports along these lines have continued.

16. The precise legal question before the Court is, therefore, whether the events described in paragraph 14 constitute a reasonable assurance, in the absence of any explicit assurance (paragraph 13), and against the background described in paragraph 15. The standard is that of Sinai Hospital (my paragraph 12).

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represents the partial week ending August 12, 1993 with the receipt of a letter and contract. I filed a claim for this week, in a timely fashion, but the claim was not paid.



17. I think it clear that, under the Sinai Hospital standard, no reasonable assurance was provided by the University, or possessed by me. The University could have provided an earlier explicit assurance. (This need not have been a contract, but might only have been an assurance that, if things continued as they were, I would return.) The University chose not to provide this assurance--presumably because it found it advantageous not to do so. It now seeks to have the advantages both of providing no explicit assurance and of having unemployment claims disallowed. This is to seek the advantages of employer inexplicitness, combined with the benefits of claimant ineligibility. But, at least on its face, to recognize a category of reasonable assurance which has both these features is not to read the unemployment compensation statute "in favor of eligibility" (Sinai Hospital at 40); it is to read it in favor of ineligibility.

18. The facial character of recognizing such an inexplicit reasonable assurance is not conclusive. It would not matter if this case contained other sources of assurance which had effects at least equal to explicitness.<sup>2</sup> But nothing remotely like this is true.

19. The Decision of the Hearing Examiner found an assurance in "past practices". Decision of September 15, 1993, at 2. The Examiner claimed (in the sentence immediately preceding the remark about "past practices") that "the evidence demonstrated that the claimant, in 1992 and 1993, had returned to work at the end of the summer breaks."<sup>3</sup> Id. But this sentence is either false or irrelevant. If read as referring to the time at issue, the sentence is false. I had returned after a summer break only in 1992; 1993 is the time at issue. If read as referring to a later time, the sentence is irrelevant. It is of course undisputed that I had a reasonable assurance of returning after I had returned.<sup>4</sup>

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<sup>2</sup>Explicitness is involved in the standard, or central, legal meaning of "assurance". An assurance is "[t]he act or action of assuring; e.g. a pledge, guaranty, or surety. A declaration tending to inspire full confidence." Black's Law Dictionary 123 (6th ed. 1990). Here there was no assuring act, until the August, 1993 letter and contract.

<sup>3</sup>Returning after a summer is the most relevant case, both because that is the case here and because University funding is presumably budgeted by academic year.

<sup>4</sup>The Decision of the Hearing Examiner was incompetent

20. What is left of the Hearing Examiner's claim is the fact that I had returned after one summer. But an inference from one event to the likelihood of a similar event is weak.<sup>5</sup> It is really impossible, as a matter of pure logic, that such an

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in other ways too. It asserted "[t]he claimant attempted to show that he did not receive a contract for the fall, 1993 semester until August, 1993 . . ." Decision of September 15, 1993, at 2. But I did not only "attempt[] to show" this; it was an undisputed matter of fact. Indeed, a copy of the cover letter which accompanied the contract, bearing an August date, was introduced into evidence by the University.

The Decision asserted "The claimant was listed as a faculty member in the school's fall semester book . . ." Decision of September 15, 1993, at 1-2. But this was not proved; it is only that the question was asked, and that I answered that I may have been but that I did not have a copy of that book. (I do not in fact know whether I was so listed or not; I have noticed that I am not listed in the course guide for next semester [Spring 1994], though I have again been approached about returning.)

The Decision asserted "The claimant [sic--the University is meant] . . . indicated that they were planning to have him return to work in the fall, 1993 which he has done." Decision of September 15, 1993, at 1-2. But that the University had so indicated is unsupported, except by the faulty factual assertions already noted. That I did return is irrelevant, since the level of an assurance cannot be judged by an outcome. (Someone wins the lottery, but that person had no reasonable assurance of doing so.)

In the hearing the Examiner asserted that the issue of the alleged overpayments (see my ¶5 and my n1) was not before him; but his Decision did decide those issues. The hearing was recorded, so his assertion that the alleged overpayments were not before him could presumably be found.

It is possible that the incompetence of the Decision reflects a bias against claimants, or against me personally. In the hearing, the Examiner said approximately this: "We don't get many teachers here trying to--[evade the law?]; we get truck drivers--". Again the Examiner's remark could presumably be found.

<sup>5</sup>Perhaps the Hearing Examiner had in mind that I would have known of other contractual faculty members who had returned after summers. (But no evidence was taken on this point, and it was unmentioned in the Decision.) I think I in fact knew of only one such person. In any case, I would have been unaware of those who had sought to return and had been unable to do so. An inference from only positive instances, when the negative instances are unknown, is also weak.

inference could rise to the level of a reasonable assurance. So, in locating the assurance in a past practice consisting of one event, the Hearing Examiner did interpret "reasonable assurance" so as to move it away from its central meaning, in the direction of ineligibility. That is inconsistent with the interpretative principle of Sinai Hospital.

21. Nothing else was mentioned by the Hearing Examiner, and nothing is in the facts of the case, which could reasonably stand in for explicitness. Nothing was mentioned, or is in the facts, which would have made a prudent person confident of returning.<sup>6</sup> I can assure the Court that, as a matter of psychological fact, I did not have such a confidence until the letter and contract arrived. Under these circumstances, to find a reasonable assurance is to favor ineligibility. But, again, that violates the interpretative principle of Sinai Hospital.

22. For these reasons, I believe that, before August 12, 1993, I did not have a reasonable assurance of returning to Towson State in the Fall Semester of 1993. I request a judicial determination to this effect. With regard to the alleged overpayments (see my n1), I request an appropriate injunction or other relief. With

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<sup>6</sup>This is a case in which, because of the employer's decision, the employee was a semester-by-semester contractor, instead of an employee with a normal academic contract embracing some number of whole academic years. It is a case in which, because of the employer's decision, all benefits are denied to the employee--except the right to purchase employee-paid health insurance. It is a case in which, because of the employer's decision, teaching assignments during the summer are unlikely. (Priority is given the regular faculty--those who do have contracts for whole academic years.) It is a case in which, because of the employer's decision, no explicit assurance that an employee will return in a future semester is provided until very near that semester. And it is a case in which the employer then seeks to deny the employee the social safety net that would normally be in place in such circumstances.

I have searched, in legal encyclopedias, case reporters, and Lexis, for a Maryland case finding a reasonable assurance when all of these features are present. I have found no such case.

I have also searched (though less comprehensively) for an out-of-state case finding a reasonable assurance under all of these circumstances. Again I have found no case. In contrast, the principles of Sinai Hospital appear to have anchored the case law of the states generally as regards the federal-state programs of unemployment compensation. See 76 Am. Jur. 2d Unemployment Compensation §13, esp. n48 (1992).

Petition of Stanley Paul Kinzie

7

regard to the unpaid claims (see my n1), I request monetary damages in the amount of \$1019.43, plus appropriate interest.

**1993**

DISC. DAYS CHILD CARE V NUTRITION & TRANS Box 481  
Case No. 93258067 [MSA T2691-5556, OR/22/10/31]

YATES VS MD INSURANCE COMMISSIONER, ET Box 499 Case  
No. 93270059 [MSA T2691-5574, OR/22/11/1]

BOARMAN VS LITTON SYSTEM INC Box 551 Case No.  
93308008 [MSA T2691-5627, OR/22/12/6]

KINZIE VS.MD DEPT OF ECON.& EMP. DEV. Box 599 Case No.  
93337061 [MSA T2691-5675, OR/22/13/7]

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148 pages

KIM VS. ZONING BOARD Box 614 Case No. 93350027 [MSA  
T2691-5690, OR/22/13/22]