



**DEPARTMENT OF HUMAN RESOURCES  
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

383 - 5032  
- DECISION -

STATE OF MARYLAND  
HARRY HUGHES  
Governor  
KALMAN R. HETTLEMAN  
Secretary

BOARD OF APPEALS  
THOMAS W. KEECH  
Chairman  
HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members  
SEVERN E. LANIER  
Appeals Counsel

DECISION NO.: 16-BH-83  
DATE: January 10, 1983  
APPEAL NO.: 11533  
S. S. NO.:

**CLAIMANT:** Gilbert G. Schmidt

**EMPLOYER:** Monumental Life Insurance Co.

L. O NO.: 40  
APPELLANT: CLAIMANT

**ISSUE** Whether the Claimant is eligible for benefits pursuant to § 3(b) of the Maryland Unemployment Insurance Law.

**NOTICE OF RIGHT OF APPEAL TO COURT**

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT *February 9, 1983*

**- APPEARANCES -**

**FOR THE CLAIMANT:**

Gilbert G. Schmidt - Claimant  
Thomas Bollinger - Attorney  
Jean Schmidt - Witness

**FOR THE EMPLOYER:**

Christopher Miles -  
Reed, Roberts  
Wilbert Ring -  
District Manager

**EVALUATION OF THE EVIDENCE**

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

Although the Claimant raised an issue concerning his receipt of some type of vacation pay or vacation commission credit from the employer, the evidence on this type of payment, in the absence of the actual contract, is so vague that the Board is unable to make any factual findings about the details of this vacation pay. Since the Claimant raised this issue, the burden is on him to produce sufficient evidence in order for the Board to make findings of fact concerning this issue. Since this was not done, the Board will make no findings of fact or conclusions of law on the vacation pay issue .

The Board apologizes for the delay in the issuance of this decision. The Board notes, however, that this delay was exacerbated by the disruption of the Board office caused by the Claimant's wife's continual phone calls and inquiries to the Board during the period after the hearing.

#### FINDINGS OF FACT

The Claimant was employed for over 31 years as an agent for the Monumental Life Insurance Company. His last day of work was July 1, 1982. His duties included selling life insurance and collecting premiums on life insurance policies previously sold.

His contract provided for a minimum commission payment of \$75.00 per week if his commissions failed to reach that level. During none of the periods in question did the Claimant ever actually receive this \$75.00, since his commissions were always higher than \$75.00. Between April of 1981 and August of 1981, the Claimant received \$15 per week car allowance in addition to his commission. The Claimant did not have to account to his employer in any way for this car allowance. The services which the Claimant performed for this car allowance were identical to or at least similar to his regular collection duties.

The Claimant was under the supervision and control of the Monumental Life Insurance Company in the performance of his duties. He did not hold himself out as, nor did he operate as, an independently established businessman. The Claimant was prohibited by the terms of his employment contract from working for any other insurance company at the time of his employment with Monumental .

The Claimant filed a claim for unemployment insurance benefits with an effective date of July 4, 1982. For the purposes of calculating this monetary eligibility for benefits under the Maryland Unemployment Insurance Law, his base year consists of the second, third and fourth quarters of 1981 and the first quarter of 1982.