# DEPARTMENT OF EMPLOYMENT AND TRAINING


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

**(301) 383-5032**

**STATE OF MARYLAND**
HARRY HUGHES
Governor




## — DECISION —

Decision No.: 205-BR-85

Date: March 27, 1985

Claimant: Loren G. Ritchie

Appeal No.: 09012

S. S. No.:

Employer: Allegany County Board of Education

L.O. No.: 3

Appellant: CLAIMANT

Issue: Whether the claimant is eligible for benefits within the meaning of §4(f)(4) of the law.

## — NOTICE OF RIGHT OF APPEAL TO COURT —

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON April 26, 1985

## — APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

This case was heard en masse with the cases of four other substitute custodians (appeal nos. 09008, 09010, 09014 and 09015) and, although many of the facts were the same for each claimant, there were significant differences. Nevertheless, the Appeals Referee issued almost identical decisions in each case using identical facts that were not correct for all the claimants. The

Board has reviewed the entire record and will issue a separate decision in each case. However, the testimony of each of those claimants is part of the entire record for each individual claimant's case.

Upon review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee and concludes that the claimant should not be disqualified under §4(f)(4) of the law.

The claimant was a substitute custodian employed by the Board of Education of Allegany County. There are approximately 25 substitute custodians on the employers list and during the year approximately 15 are called for work. Custodians generally work on a twelve month basis but substitute custodians may not be called during all 12 months. Although the employer's testimony is somewhat vague on this matter, the Board finds, based on our review of the evidence, that many substitute custodians do work at least part of the summer and they are not strictly ten month employees.

The school year ended on June 30, 1984. The claimant continued to work until July 2, 1984 when he was replaced by a permanent custodian who had been "bumped" due to the closing of some schools. As a result, the claimant filed for unemployment insurance with a benefit year beginning July 1, 1984. On July 20, 1984, he was notified by the agency by a written determination that he was not eligible for benefits because he had reasonable assurance of work in the fall semester pursuant to §4(f)(4) of the law. However, on July 31, 1984, the agency, based on new information, issued a second determination finding that the claimant did not have reasonable assurance under §4(f)(4) because he had been "separated from employment due to being 'bumped' from his job by a more senior employee, not because school closed for the summer." (See agency document DHR/ESA 222.) The claimant had been called back to work on August 21, 1984 and was still working at the time of the Appeals Referee hearing on September 7, 1984.

The Appeals Referee based his decision on the erroneous conclusion that the second determination of the agency on July 31, 1984 was invalid under recent Board precedents, most notably Leftwich, 140-BH-83. Leftwich, however, is not applicable here because §4(f)(4), as amended in 1984, specifically provides for a claimant who initially has reasonable assurance that he will perform services in the next academic year:

> If, however, that individual is not offered an opportunity to perform the service for the educational institution for the next successive year or term, the individual shall be paid retroactively, provided the individual:
>
> (i) Filed a timely claim for each week;
> (ii) Is otherwise eligible, and
> (iii) Was denied benefits solely under this paragraph.