

- DECISION -

Claimant:
NATIRA E DIXON

Decision No.: 0-BR-00

Date: February 15, 2013

Appeal No.: 1234289

Employer:

S.S. No.:

L.O. No.: 64

Appellant: Claimant

Issue: Whether the claimant is able, available for work and actively seeking work within the meaning of the MD Code Annotated, Labor and Employment Article, Title 8 Sections 903 and 904; and/or whether the claimant is entitled to sick claim benefits within the meaning of Section 8-907.

- NOTICE OF RIGHT OF APPEAL TO 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 file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: March 18, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a modification of the hearing examiner's decision.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*.

Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training*, 309 Md. 28 (1987).

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or evidence that the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that he is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., § 8-903*. A claimant may not impose conditions and limitations on his willingness to work and still be available as the statute requires. *Robinson v. Md. Empl. Sec. Bd*, 202 Md. 515, 519 (1953). A denial of unemployment insurance benefits is warranted if the evidence supports a finding that the claimant was unavailable for work. *Md. Empl. Sec. Bd. v. Poorbaugh*, 195 Md. 197, 198 (1950); compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1, 21 (2002).

A claimant should actively seek work in those fields in which he is most likely to obtain employment. *Goldman v. Allen's Auto Supply*, 1123-BR-82; also see and compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1 (2002).

The term "available for work" as used in § 8-903 means, among other things, a general willingness to work demonstrated by an active and reasonable search to obtain work. *Plaughter v. Preston Trucking*, 279-BH-84. A claimant need not make herself available to a specific employer, particularly when the employer cannot guarantee her work, in order to be available as the statute requires. *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1, 22 (2002).

Section 8-903 provides that a claimant must be able to work, available to work, and actively seeking work in each week for which benefits are claimed.

In her appeal, the claimant contends: "I feel as though the appeal board [sic] was incorrect in the decision that was rendered on my case. I disagree with the decision..." The Board notes that the prior decision was issued by a Lower Appeals hearing examiner, not by the Board of Appeals. The Board, however, construes the claimant's contention to be an appeal to the Board and will review the matter.

The hearing examiner found the claimant to have been able to work, available for work, and actively seeking work for the period August 19, 2012 through August 25, 2012. The Board agrees with this portion of the hearing examiner's decision. The hearing examiner, however, found the claimant unavailable for work as of August 26, 2012, based upon her conclusion that the claimant was not applying for work on every possible shift. There is no requirement that a claimant be available to work all of the twenty-four hours of every day or all of the seven days of the week. The hearing examiner erred in holding the claimant to this unreasonable requirement.

The evidence demonstrated that the claimant was available for work most of the day during most of the week. The claimant was seeking work which traditionally is offered during the hours of her availability. The Board is of the opinion that the claimant was available for work as required under §8-903.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant has met her burden of demonstrating that she was able, available, and actively seeking work, from the week beginning August 19, 2012, forward within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be affirmed, as modified, for the reasons stated herein and in the hearing examiner's decision.

DECISION

The claimant is able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. Benefits are allowed from the week beginning August 19, 2012.

The Hearing Examiner's decision is affirmed, as modified.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

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