

- DECISION -

Claimant:
PAULINE BENJAMIN

Decision No.: 10-BR-03

Date: January 07, 2003

Appeal No.: 0225979

S.S. No.:

Employer:

L.O. No.: 65

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: February 06, 2003

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. However the Board concludes that these facts warrant a different conclusion of law.

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.

The law requires a claimant to be able, available and actively seeking full time employment without substantial restrictions. The claimant is making her required weekly work searches. The fact that the claimant is spending a total of eight hours a week for two months, attending training that will lead to guaranteed employment should not be a bar to the receipt of unemployment benefit. The claimant was attempting to maximize her employment potential.

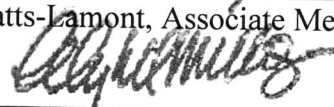
DECISION

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 September 15, 2002.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:
PAULINE BENJAMIN
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

PAULINE BENJAMIN

SSN #

Claimant

vs.

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation
Division of Appeals**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 0225979

Appellant: Claimant

Local Office : 65 / SALISBURY
CLAIM CENTER

October 31, 2002

For the Claimant : PRESENT

For the Employer :

For the Agency:

ISSUE(S)

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.

FINDINGS OF FACT

The claimant established a benefit year beginning April 14, 2002, with a weekly benefit amount of \$184.00. The local office determined that the claimant failed to be available to provide evidence to support that she was able, available and actively seeking work as required by the Maryland Unemployment Insurance Law. Benefits were therefore, denied under Section 8-903 of the Maryland Unemployment Insurance Law which requires that a claimant be able to work, available for work and actively seeking work in order to be eligible for benefits. Since filing for unemployment insurance benefits, the claimant has been medically able to work without restriction. The claimant is making an active search for full-time employment by making at least two job contacts per week. Beginning September 16, 2002, the claimant is attending Black Jack dealing classes through Foxwood Casinos. The claimant is guaranteed a job with the casino once the classes are completed on or about November 22, 2002. The claimant attends class on Mondays and

Thursdays from

7:00 a.m. to 11:00 a.m. The claimant would be unwilling to attempt to change her classes or to forego these classes in order to accept full-time employment. The claimant's customary occupation is in the fields of clerical and cashier which both may require hours which would conflict with the claimant's class schedule.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-903 provides that a claimant for unemployment insurance benefits shall be (1) able to work (2) available for work; and (3) actively seeking work. In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515 97 A.2d 300 (1953), the Court of Appeals held that a claimant may not impose restrictions upon his or her willingness to work and still be available as the statute requires.

Normally, a claimant attending day school does not meet the basic requirement of Md. Code Ann., Labor & Emp. Article, Section 8-903 that a claimant for unemployment insurance benefits must be available for work, without restriction. In the case of Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327 (1977), the U.S. Supreme Court held that "...attending school during daytime hours imposes a greater restriction upon obtaining full-time employment than does attending school at night. In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."

In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant for unemployment insurance benefits may not impose restrictions upon availability and still meet the standard of the statute. Attending day school is a material restriction upon one's availability for work and is thus disqualifying.

EVALUATION OF EVIDENCE

The claimant has the burden of proof to show that she is able, available and actively seeking work as required by the Maryland Unemployment Insurance Law. The claimant in the instant case, has failed to meet this burden of proof. The credible testimony presented at the hearing indicates that the claimant does attend class during hours in which an employer may reasonably expect her to work. The claimant testified during the hearing that she would be unwilling to change her class schedule or to forego taking classes in order to accept full-time employment. As such, the Hearing Examiner determines that the claimant's school attendance does pose a material restriction on her availability to work. Accordingly, benefits must be denied under Section 8-903 of the Maryland Unemployment Insurance Law.

DECISION

IT IS HELD THAT the claimant is not fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are denied for the week beginning September 15, 2002 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

R M Liberatore, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Notice of Right to Petition for Review

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by November 15, 2002. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787

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

Date of hearing : October 23,2002

GH/Specialist ID: USB2F

Seq No: 004

Copies mailed on October 31, 2002 to:

PAULINE BENJAMIN

LOCAL OFFICE #65