

- DECISION -

Claimant:	Decision No.:	1040-BR-12
STEPHEN G UREY	Date:	May 14, 2012
	Appeal No.:	1100004
	S.S. No.:	
Employer:	L.O. No.:	60
	Appellant:	CLAIMANT - REMAND FROM COURT

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

- 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: June 13, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant is attending school but with a flexible school schedule that can be adjusted to accommodate work hours.

Although the claimant is limited to lifting 25 pounds, the jobs that he is pursuing do not require lifting, i.e. receptionist, bookkeeper, security.

The claimant is actively seeking work. There were two exceptions. The claimant did not look for work the week of November 28, 2010 because he was moving and the claimant did not look for work for the week of December 20; 2010 since he was recovering from eye surgery.

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, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. 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. *Plaugher 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.

While § 8-903 does not demand that a claimant look for work 24 hours per day, seven days per week, looking for work must be a claimant's primary activity. When school studies are the claimant's primary focus and interfere with the primary activity of seeking work and negatively affect a claimant's "ability and availability" to accept all appropriate employment offers, the claimant does not meet the eligibility requirements of § 8-903. See, e.g., *In re: Poole, 145-BH-84*.

A claimant whose school schedule does not materially affect his job search, on the other hand, may be able and available for work within the meaning of § 8-903. See, e.g., *In re: Clasing, 95-BH-90* (the claimant's attendance two hours per week in an educational program did not interfere with his ability to work or with his work search). There is no reason to disqualify a claimant under the availability provisions when his part-time classes have been arranged to be flexible enough to change to accommodate any work schedule. *In re: Mallet, 1132-BR-92*. In addition, a claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. *Drew-Winfield v. Patuxent Medical Group, 87-BH-87*.

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 met his burden of demonstrating that he was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd., 202 Md. 515 (1953)* and *Maryland Annotated, Labor & Employment Article, §8-903*. Benefits are allowed provided the claimant meets all the other eligibility requirements for the week beginning December 12, 2010. However, benefits are denied for the week beginning November 28, 2010 through the week ending December 4, 2010 and for the week beginning December 19, 2010 through the week ending January 1, 2010. The decision of the hearing examiner shall be modified for the reasons stated herein.

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 for the week beginning December 5, 2010 through the week ending December 18, 2010 and from the week beginning January 2, 2011, providing the claimant meets all the other eligibility requirements.

The claimant is not 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. The claimant is disqualified from receiving benefits from the week beginning November 28, 2010 through the week ending December 4, 2010 and for the week beginning December 19, 2010 through the week ending January 1, 2011.

The Hearing Examiner's decision is modified.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

KJK

Copies mailed to:

STEPHEN G. UREY

SUSAN BASS DLLR

CORNELIA BRIGHT GORDON CHIEF ATTY

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

STEPHEN G UREY

SSN #

Claimant

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: 1100004
Appellant: Claimant
Local Office : 60 / TOWSON CALL
CENTER

May 2, 2011

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903. Whether the appeal should be reopened pursuant to COMAR 09.32.06.02 N.

FINDINGS OF FACT

The Claimant (Stephen Urey) filed for unemployment insurance benefits establishing a benefit year effective August 15, 2010 with a weekly benefit amount of \$236.00.

Since the week ending December 4, 2010, the Claimant has not been actively seeking and searching for work. With respect to whether the Claimant has any restrictions on his availability to perform work, in June 2010 the Claimant had a hip replacement and is medically restricted from lifting more than twenty-five pounds (25 lbs.). The Claimant does not know when the medical restriction will be lifted. In September 2011, the Claimant enrolled at the Accounting and Bookkeeping Center and his classes are scheduled on Mondays through Fridays from 6:00 p.m. to 9:00 p.m. The Claimant's last job schedule was from 3:30 p.m. to 11:30 p.m. The Claimant contends that his school schedule can be altered to accept full-time employment; however, the Claimant is not willing to drop his classes to accept full-time employment.

CONCLUSIONS OF LAW

Md. Code Ann., Labor of 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.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The Claimant had the burden to show by a preponderance of the evidence that he is in compliance with Agency requirements. In the case at bar, that burden has not been met. The Claimant is restricted from accepting full-time work without medical restrictions because he has not obtained a release from his physician evidencing that he can return to work without restrictions. Additionally, the Claimant is further enrolled in school five (5) evenings a week and has not proven a genuine attachment to the workforce, whereas his usual occupation often requires him to work during the hours that he is attending school. The Claimant candidly admitted that he would not drop his classes to accept full-time employment. Accordingly, a disqualification is warranted and benefits will not be allowed for those weeks in which the Claimant demonstrated a material restriction upon availability for work, as discussed above.

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 November 28, 2010 and until the Claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is modified.

L. Williamson

L. Williamson, 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 410-767-2404. 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.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right of Further Appeal

Any party may request a further appeal 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 May 17, 2011. 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
Phone 410-767-2781

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

Date of hearing: April 01, 2011
AEH/Specialist ID: UTW2D
Seq No: 006
Copies mailed on May 2, 2011 to:

STEPHEN G. UREY
LOCAL OFFICE #60