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STATE OF MARYLAND  
DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor  
EUGENE A. CONTI, JR., Secretary

Board of Appeals  
Hazel A. Warnick, Chairperson

## - DECISION -

Claimant:

DEBORAH A. LAUGHARD

Decision No.: 01119-BH-98

Date: April 8, 1998

Appeal No.: 9715223

S.S. No.:

Employer:

L.O. No.: 40

Appellant: Claimant

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

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## - 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: May 8, 1998

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## - APPEARANCES -

FOR THE CLAIMANT:

Deborah A. Laughard  
Robert Lennon, Attorney

FOR THE EMPLOYER:

John T. McGucken



## 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 in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The hearing before the Board was for legal argument only. In the case of a determination of able, available, and actively seeking work, the claimant has the burden of proof. In this case the Board is not persuaded by the claimant's argument and finds, based on a preponderance of the evidence, that she did not carry her burden as to her ability and her availability to work within the meaning of Section 8-903. The Board is persuaded with the Agency's argument that the claimant is not entitled to sick claims within the meaning of Section 9-907.

The Board is not persuaded that sufficient evidence was presented to show that the claimant could perform any work in light of her disability.

### FINDINGS OF FACT

The Board adopts the findings of fact of the hearing examiner.

### CONCLUSIONS 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.

Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994) provides that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restriction upon availability for 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.

Section 8-903(b) however provides that the Secretary may not use a disability of a qualified individual with a disability as a factor as finding that an individual is not able to work under Section (a)(1)(i) of this section. Section 8-903(a)(1)(i) provides that in order to be eligible for unemployment insurance benefits an individual shall be able to work.

Under the Americans with Disabilities Act (ADA) the term "disability" has been defined as either a physical or mental impairment that substantially limits one or more of the major life functions of an individual, a record of such an impairment or being regarded as having such an impairment.

The ADA rule defines "mental impairment" to include any mental or psychological disorder such as emotional or mental illness. Examples of emotional or mental illnesses include major depression. However, even if a condition is an impairment it is automatically a "disability." "To rise to the level of a "disability, "an impairment must substantially "limit" one or more major life activities of the individual.

In this case, the claimant clearly meets the definition of a qualified individual with a "disability." Claimant has a mental impairment that substantially limits one or more of her major life activities. In this respect she is unable to work, and cannot perform other daily life activities such as driving a car or even shopping for groceries.

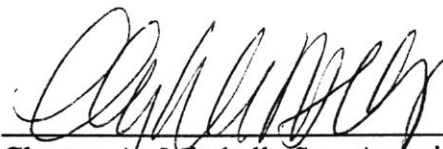
However, under the Maryland Unemployment Insurance Law, while the Secretary may not use the "disability" of a qualified individual with a "disability" as a factor in finding that the individual is not able to work, the Unemployment Insurance Law also requires that a claimant be available for work and actively seeking work. In this particular case, the claimant is neither available for work nor is she actively seeking work as she has acknowledged during the hearing.

Therefore, the claimant is still disqualified under Section 8-903 of the law with respect to the criteria that in order to be eligible for benefits an individual shall be available for work and actively seeking work. If however, the claimant becomes available for work and actively seeking work. If however, the claimant becomes available for full-time work and is capable of actively seeking full-time work, the claimant should immediately report to the local office and the penalty can be lifted by the local office at that time.

### **DECISION**

IT IS HELD THAT the claimant is not fully able and available for work without material restriction and/or not actively seeking work within the meaning of Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994). Benefits are denied for week beginning June 22, 1997 and until such time as the claimant is fully able, available and actively seeking work without material restriction.

The decision of the hearing examiner is affirmed.



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

dt

Date of hearing: January 7 1998

Copies mailed to:

DEBORAH A. LAUGHARD

ROBERT J. LENNON, ESQ.

Local Office - #40

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

DEBORAH A. LAUGHARD

Before the:

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

SSN .....

**Claimant**

vs.

Appeal Number: 9715223  
Appellant: Claimant  
Local Office: 40 / Eastpoint

**Employer/Agency**

August 29, 1997

**For the Claimant:**

**For the Employer:** PRESENT, CHRIS KIRCHENHEITER

**For the Agency:** FRANCINE JONES

### **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 claims within the meaning of Section 907.

### **FINDINGS OF FACT**

The claimant was a full-time cashier/manager for about two years. She encountered a series of deaths in her family occurring on July 27, 1996, April 5, 1997, and May 4, 1997. Over the years claimant periodically has suffered from depression but was always able to fully function with life activities as well as with work. This time, however, the deaths in the family triggered a new severe episode of depression diagnosed as major depression and bereavement by her physician. (See Claimant's Exhibit 1). Claimant has been placed on a combination of medications, although she is still trying to find the proper combination. (See Claimant's Exhibit 2). She is currently not able to work nor function with life activities at this point because she cannot drive and has difficulty with concentration. She continues to receive counseling or therapy in addition at least once per week.

She was initially hospitalized for her condition on June 17, 1997 for two weeks because of a suicidal episode the prior weekend.

Claimant had submitted Physician's Statement indicating that she could not work full time and that she was expected to be released to return to work as of July 21, 1997 which deadline she was unable to meet. She continues to be unable to work full time at the present time.

She did not file her claim for unemployment insurance benefits until the week beginning June 29, 1997.

Prior to this onset of depression, claimant had been an excellent worker.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994) provides that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restriction upon availability for 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.

Section 8-903(b) however provides that the Secretary may not use a disability of a qualified individual with a disability as a factor as finding that an individual is not able to work under Section (a)(1)(i) of this section. Section 8-903(a)(1)(i) provides that in order to be eligible for unemployment insurance benefits an individual shall be able to work.

Under the Americans with Disabilities Act (ADA) the term "disability" has been defined as either a physical or mental impairment that substantially limits one or more of the major life functions of an individual, a record of such an impairment or being regarded as having such an impairment.

The ADA rule defines "mental impairment" to include any mental or psychological disorder such as emotional or mental illness. Examples of emotional or mental illnesses include major depression. However, even if a condition is an impairment it is automatically a "disability." To rise to the level of a "disability," an impairment must substantially "limit" one or more major life activities of the individual.

In this case, the claimant clearly meets the definition of a qualified individual with a "disability." Claimant has a mental impairment that substantially limits one or more of her major life activities. In this respect she is unable to work, and cannot perform other daily life activities such as driving a car or even shopping for groceries.

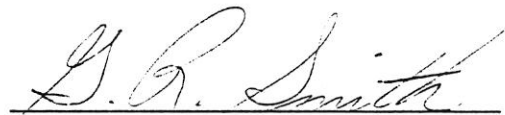
However, under the Maryland Unemployment Insurance Law, while the Secretary may not use the "disability" of a qualified individual with a "disability" as a factor in finding that the individual is not able to work, the Unemployment Insurance Law also requires that a claimant be available for work and actively seeking work. In this particular case, the claimant is neither available for work nor is she actively seeking work as she has acknowledged during the hearing.

Therefore, the claimant is still disqualified under Section 8-903 of the law with respect to the criteria that in order to be eligible for benefits an individual shall be available for work and actively seeking work. If however, the claimant becomes available for full-time work and is capable of actively seeking full-time work, the claimant should immediately report to the local office and the penalty can be lifted by the local office at that time.

### DECISION

IT IS HELD THAT the claimant is not fully able and available for work without material restriction and/or not actively seeking work within the meaning of Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994). Benefits are denied for the week beginning June 22, 1997 and until such time as the claimant is fully able, available and actively seeking work without material restriction.

The determination of the claims examiner is affirmed.

  
G. R. Smith, ESQ  
Hearing Examiner

### Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **September 15, 1997**.

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

Date of hearing: August 21, 1997  
DA/Specialist ID: 40297  
Seq. No.: 002  
Copies mailed on August 29, 1997 to:

DEBORAH A. LAUGHARD  
LOCAL OFFICE #40