

**- DECISION -**

Claimant:  
JASMIN R HOWELL

Decision No.: 1120-BR-15

Date: May 29, 2015

Appeal No.: 1422096

S.S. No.:

Employer:

L.O. No.: 61

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.

**- 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 29, 2015

**REVIEW OF THE RECORD**

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on October 15, 2014. That Decision held the claimant was not able to work, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning June 22, 2014 through week ending August 23, 2014. Benefits were awarded for week beginning August 24, 2014 provided the claimant met other eligibility requirements.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or

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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)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to present documentary evidence and to make a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument. Sufficient evidence exists in the record from which the Board may make its decision.

The Board finds the hearing examiner's Findings of Fact are not supported by substantial evidence in the record. Those facts are insufficient to support the hearing examiner's Decision. The Board rejects the hearing examiner's findings of fact and conclusions of law. The Board makes the following findings of fact:

The claimant filed an initial claim for unemployment benefits establishing a benefit year effective June 22, 2014. As of June 23, 2014, the claimant's vehicle was repaired and she no longer had transportation issues. The claimant has been making at least two job contacts per week in her search for work in the same area of her previous employment.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

*Md. Code Ann., Lab. & Empl. Art., §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 claimant has the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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)*.

Being able to work is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. The concept of being able to work requires an individual to be physically and mentally capable of performing the type of work being sought. Persons with injuries, illness or disabilities may still be able to work if they seek appropriate work consistent with their training, education and experience. In *Connor v. City of Baltimore*, 416-BR-87, the Board held: "A claimant who is restricted from performing certain work is not disqualified under Section 8-903 if he shows that he is able to do other work and is, in fact, seeking other work that he is capable of performing during the time has the restriction." The Board has also held, in *Swafford v. U. S. Postal Service*, 252-BH-89: "When severe limitations are placed upon a claimant's ability to work, the claimant has the burden of showing not only that she was seeking work, but seeking work that she could do, given her limitations."

In her appeal, the claimant states her general disagreement with the hearing examiner's decision and restates some of the testimony provided during the hearing.

The Board finds the claimant's testimony that her car was repaired on June 23, 2014 to be credible. The hearing examiner's finding that the claimant's car was not repaired until August 23, 2014 seems to be based upon his recollection of the claimant's testimony from a previous hearing. The weight of the evidence presented in this case does not support that finding.

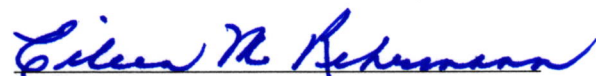
The Board finds based upon a preponderance of the credible evidence that the claimant did meet her burden of demonstrating that she was able, available, and actively seeking work, from the week beginning June 22, 2014 within the meaning of §8-903. The decision shall be reversed for the reasons stated 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 from the week beginning June 22, 2014.

The Hearing Examiner's decision is Reversed.

  
Donna Watts-Lamont, Chairperson

  
Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

JASMIN R. HOWELL

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE CORRECTED APPEALS DECISION**

JASMIN R HOWELL

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: 1422096  
Appellant: Claimant  
Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

October 15, 2014

**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, Jasmin Howell, filed a claim for unemployment insurance benefits, establishing a benefit year effective June 22, 2014, and a weekly benefit amount of \$353.00. The Claims Specialist denied benefits the week beginning June 22, 2014, until meeting the requirements of the law, because the claimant failed to be available as scheduled to present information to support that she was fully meeting the requirements of Section 8-903 of the Maryland Unemployment Insurance Law.

This matter came about as the claimant indicated during her hearing on August 22, 2014, that she could not accept full-time work due to lack of transportation and possible eviction. (Agency Ex. 1) As of August 23, 2014, the claimant's Section 8 housing situation was addressed and she was no longer facing an eviction. Her physical address is 697 Elk Mill Road, Elk Mill, Maryland. As of August 23, 2014, the claimant got her car fixed and no longer had transportation issues. The claimant has been making at least two job

contacts per week in her search for work as a CNA and a GNA; areas of employment in which she has prior experience and/or skills and abilities. The claimant is otherwise able to work without restrictions and has no other issues restricting her availability for work.

### **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 has the burden of proof to show by a preponderance of the credible evidence that claimant is able, available, and actively seeking work within the meaning of the Md. Code Ann., Labor & Emp. Article, Title 8, Section 903. The claimant testified that after the last hearing (for which this Hearing Examiner heard that matter) on that day or the next day her housing situation was addressed as her Section 8 was corrected and she was no longer facing an eviction. The claimant also testified that as of that same day her car was fixed and was fit for the road. While there was some confusion during the hearing regarding the dates (June 22 or August 22, 2014 as the date for when these issues were addressed), the testimony was clear that these issues were corrected after the hearing on August 22, 2014, not from the effective date of the denial on June 22, 2014. The claimant's Unemployment disqualification will be lifted the week beginning August 24, 2014.

### **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 nine (9) weeks from June 22, 2014 through August 23, 2014.

IT IS HELD THAT the claimant is fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed from the week beginning August 24, 2014, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto:ui@dllr.state.md.us) or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



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W E Greer, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 October 30, 2014. 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: October 02, 2014

BLP/Specialist ID: WCP2M

Seq No: 008

Copies mailed on October 15, 2014 to:

JASMIN R. HOWELL

LOCAL OFFICE #61

SUSAN BASS DLLR