

- DECISION -

Claimant:
MARK A ZAKOWSKY

Decision No.: 1126-BR-03

Date: May 01, 2003

Appeal No.: 0303417

S.S. No.:

Employer:
COCA COLA ENTERPRISES INC

L.O. No.: 63

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: May 31, 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 findings of fact 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.

Attending one class, one evening a week, for a total of 3 hours, is not a substantial restriction on the claimant's ability to work.

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 January 12, 2003.

The decision of the Hearing Examiner is reversed..



Donna Watts-Lamont, Associate Member

Hazel A. Warnick, Chairperson

Copies mailed to:

MARK A. ZAKOWSKY
COCA COLA ENTERPRISES INC
KURT A. BRAMEL
COCA COLA ENTERPRISES INC
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARK A ZAKOWSKY

SSN #

Claimant

vs.

COCA COLA ENTERPRISES INC

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: 0303417

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

March 13, 2003

For the Claimant : PRESENT

For the Employer : PRESENT , KURT A. BRAMEL

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's benefit year began on January 12, 2003. The claimant established a weekly benefit amount of \$176.

The claimant is taking one class on Tuesday nights from 5:30 p.m. to 8:30 p.m. The claimant is not willing to drop his class if offered a position which interferes with said class. The claimant's work history involves doing warehouse work. The claimant is looking for administrative positions, which represent a change in the claimant's career path, as well as warehouse work. The employer witness, who has years of experience and knowledge of warehouse work, estimates that approximately 90% of warehouse work, especially in the food industry, takes place in the evenings. Thus, the claimant is not making himself available for a large percentage of jobs in line with his prior work experience.

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.

EVALUATION OF EVIDENCE

To be eligible for unemployment insurance benefits, a claimant must be able, available and actively seeking full time work without substantial restriction. In this case, the claimant testified that he is not willing to drop his class in order to accept work. The class is in the evenings. A large percentage of jobs in line with the claimant's work history involves working in the evenings. As the claimant is unwilling to drop his evening class to accept employment, he is placing a substantial restriction on his availability for work. Therefore, the claimant is not meeting the requirements of the 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 January 12, 2003 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

C R Morrison, 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 March 28, 2003. 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 : February 21,2003
THJ/Specialist ID: WHG5U
Seq No: 002
Copies mailed on March 13, 2003 to:
MARK A. ZAKOWSKY
COCA COLA ENTERPRISES INC
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KURT A. BRAMEL
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