

- DECISION -

Claimant:
ROBERTA D WRIGHT

Decision No.: 1135-BR-03

Date: May 05, 2003

Appeal No.: 0303258

S.S. No.:

Employer:

L.O. No.: 64

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: June 04, 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.

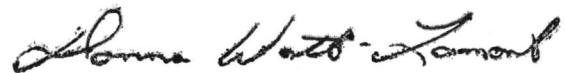
Section 8-903 provides that a claimant must be able to work available to work and actively seeking work in each week for which benefits are claimed.

The claimant was suffering from dermatitis (a rash). This condition did not cause the claimant to be unable to work. There are many jobs still available to the claimant. The claimant is also not substantially restricting her availability to work by attending school two days a week to obtain her GED. Given today's job market, one could argue that failing to obtain at least a high school diploma is a substantial restriction on one'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 5, 2003.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Associate Member

Hazel A. Warnick, Chairperson

Copies mailed to:

ROBERTA D. WRIGHT

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

ROBERTA D WRIGHT

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: 0303258

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

March 07, 2003

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 January 5, 2003 with a weekly benefit amount of \$141. The claimant last worked in January 2003 as a hair stylist. This is the claimant's customary work profession, with the customary business hours ranging from 9 am until 12 midnight.

The claimant has not been physically able to work since January 5, 2003 due to dermatitis. Specifically, the claimant is unable to perform her duties as a hair stylist due to chemical reactions with the materials she works with. Additionally, the claimant has restrictions on her availability for work due to the fact that she is taking classes at BCCC on Tuesdays and Thursdays from 9 am to 4 pm.

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.

Md. Code Ann., Labor & Emp. Article, Section 8-907 provides that an individual may not be denied benefits for any week of unemployment for failure to meet the requirements of Section 8-903(a)(1) of the subtitle to be able to work, available for work, and actively seeking work if the failure results from illness or disability that occurs after the individual has registered for work, provided that no work that would have been considered suitable at the time of the initial registration is offered to the individual after the beginning of the illness or disability.

Pursuant to COMAR 09.32.02.09(B), "A claimant filing sick claims shall furnish a written statement or other documentary evidence of the claimant's health problem from a physician or hospital. The documentary evidence of the health problem shall be updated every 30 days."

COMAR 09.32.02.09(C) requires that, "A sick claim shall be filed and documented within 14 days of the last week before the onset of the illness or inability to work for medical reasons, if the claimant was registered for work during the week for which the claim is filed."

EVALUATION OF EVIDENCE

The claimant has the burden of proof to show that she is able, available for work and actively seeking work within the meaning of the Maryland Statute. The claimant testified that she is not physically able to work due to her medical condition. The claimant was not in claim status at the time she became unable to work and therefore she is not entitled to sick claim benefits within the meaning of Maryland Statute. Additionally, the claimant has a substantial restriction on her availability for work due to the fact that she is taking classes from 9 am to 4 pm, two days per week. Therefore, the claimant has not met the statutory requirements of Section 8-903 and the disqualification shall remain in effect.

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 and ineligible to file for sick claim benefits pursuant to Section 8-907. The claimant is disqualified from receiving benefits for week beginning January 5, 2003 and until the claimant is fully able, available and actively seeking work.

The determination of the Claims Specialist is affirmed.

M M. Medvetz, 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 24, 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 20,2003
THJ/Specialist ID: RBA13
Seq No: 002
Copies mailed on March 07, 2003 to:
ROBERTA D. WRIGHT
LOCAL OFFICE #64