

**- DECISION -**

Claimant:	Decision No.:	1138-BR-12
DANIEL POLHEMUS	Date:	March 05, 2012
	Appeal No.:	1138340
	S.S. No.:	
Employer:	L.O. No.:	61
,	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.

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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: April 04, 2012

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**REVIEW OF THE RECORD**

After a review of the record, and after deleting the last two sentences of the fourth paragraph, the Board adopts the hearing examiner's modified findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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. *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)*.

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. *Plaughner 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.

In his appeal, the claimant reiterates his testimony from the hearing and his statements from his original appeal. Inexplicably, the hearing examiner disregarded this claimant's credible testimony concerning his willingness to change or drop classes and his credible testimony that full-time work was a priority. The hearing examiner commented that the claimant had changed his position in this regard, but there was no evidence in the record to support this conclusion. The claimant is only in class and unavailable for work about 6.5 hours each week. The claimant is seeking work in fields which have varying schedules and for which he has training, education and experience. The Board does not find the claimant's minimal school schedule conflicts, particularly in light of his willingness to change or drop classes, to render the claimant unavailable for work.

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 has 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 §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 October 2, 2011.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

DANIEL POLHEMUS

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

DANIEL POLHEMUS

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: 1138340

Appellant: Claimant

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

December 8, 2011

**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, Daniel Polhemus, filed for unemployment insurance benefits establishing a benefit year effective October 2, 2011 with a weekly benefit amount of \$203 .00. His last day of work was September 22, 2011. He worked full-time in Retail Sales.

On or about September 6, 2011, claimant enrolled for fifteen (15) credits comprising five courses at The College of Southern Maryland. The classes end on December 16, 2011. He attends classes on Mondays from 11:30 A.M. to 3:30 P.M. and on Wednesdays from 1:00 P.M. to 3:30 P.M. He took an on-line Saturday class which ended on October 20, 2011.

The College of Southern Maryland has a policy which recognizes that students may work and offers alternatives if work conflicts with a class schedule. (Claimant Exhibit # 2). It offers, for example, Weekend College, On-Line Learning and Web-Hybrid Courses.

If the classes that claimant takes conflicts with full-time work and there was no alternative, full-time work

would take precedence. That is his position now. Prior thereto, school took precedence.

Claimant is physically and emotionally able to work.

As to job searches (See Claimant Exhibit # 1), they are as follows:

Week of October 2, 2011, he sought work with Legal Placements and Green Home Solutions.

Week of October 9, 2011, he sought work with two Gamestop Stores.

Week of October 16, 2011, he sought work with two other Gamestop stores.

Week of October 23, 2011, he sought work with Classic Image Salon and Day Spa and The Liquor Store.

Week of October 30, 2011, he sought work with Gamestop and Subway.

Week of November 2, 2011, he sought work with two Subway Stores.

### **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.

A claimant attending an educational institution does not normally meet the requirements of Md. Code Ann., Labor & Emp. Article, Section 8-903 which provides that a claimant for unemployment insurance benefits must be able, available and actively seeking work. School attendance normally operates as a substantial restriction upon availability for work.

However, a claimant for unemployment insurance benefits who is a student will not be disqualified from the receipt of benefits pursuant to Section 8-903 if he or she can demonstrate that he or she is genuinely attached to the work force, despite attendance at school. Student status is not disqualifying per se, but the claimant must demonstrate that he or she is primarily a worker who also goes to school, rather than a student who works. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

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.

### **EVALUATION OF EVIDENCE**

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 been met after November 12, 2011, the date of the subject hearing. The only possible restriction is school, and the claimant demonstrated that now he either would adjust his school schedule to accommodate his work schedule or, if that couldn't be done, he would

drop his class or classes to accommodate his work schedule. Prior to the date of the hearing, he would not adjust his school schedule.

He has demonstrated good faith efforts to find work.

### 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 from the week beginning October 2, 2011 through the week ending November 12, 2011.

IT IS FURTHER HELD THAT the claimant is 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 November 13, 2011, 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 reversed.



G P Adams, 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 December 27, 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: November 12, 2011

AEH/Specialist ID: WCP1A

Seq No: 001

Copies mailed on December 8, 2011 to:

DANIEL POLHEMUS  
LOCAL OFFICE #61