

***-DECISION-***

Claimant:  
KWAKU O KUSHINDANA

Decision No.: 1142-BH-02

Date: May 07, 2002

Appeal No.: 0122062

Employer:  
OFFICE OF EMPLOYMENT DEVEL A03

S.S. No.: 434-88-2589

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.

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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: June 06, 2002

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**- APPEARANCES -**

FOR THE CLAIMANT:  
Present

AGENCY  
Not Present

FOR THE EMPLOYER:  
Not Present

### EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. 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 Board notes that the Employer and the Agency, duly notified of the date, time, and place of the hearing, failed to appear. The Board finds the claimant to be credible.

### FINDINGS OF FACT

The claimant went to Louisiana to be with his mother who is diagnosed with Alzheimer's Disease. There are no restrictions upon the claimant's availability for full-time work as there are other family members who can care for the claimant's mother if he is offered full-time employment. The claimant is in fact not restricting his job search or limiting his availability and has made an active search for employment.

### CONCLUSIONS OF LAW

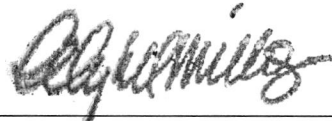
Section 8-903 provides that a claimant must be able to work available to work and actively seeking work in each week for which benefits are claimed.

The claimant, based upon a preponderance of the evidence, has shown that he is able and available for full time work and has made an active search for full time employment. The decision of the hearing examiner shall be reversed.

### DECISION

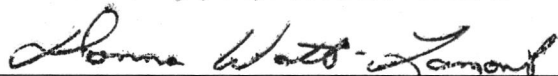
The claimant is able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. Benefits are allowed from the week beginning October 14, 2001.

The decision of the Hearing Examiner is reversed.



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Clayton A. Mitchell, Sr., Associate Member



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Donna Watts-Lamont, Associate Member

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Hazel A. Warnick, Chairperson

Date of hearing: March 19, 2002

Copies mailed to:

KWAKU O. KUSHINDANA  
OFFICE OF EMPLOYMENT DEVEL A03  
OFFICE OF EMPLOYMENT DEVEL A03  
Michael Taylor, Agency Representative

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

KWAKU O KUSHINDANA

SSN # 434-88-2589

**Claimant**

vs.

OFFICE OF EMPLOYMENT DEVEL A03

**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: 0122062

Appellant: Claimant

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

December 12, 2001

**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's benefit year began on September 30, 2001. His weekly benefit amount was established at \$280.

On September 5, 2001, the claimant took a leave of absence to tend to his mother, who was diagnosed with Alzheimer's Disease. Pursuant to the separation agreement entered into with employer, the claimant became separated from employment on October 15, 2001. The claimant has tended to and cared for, his mother since October 15, 2001 and plans to do so on a full-time and indefinite basis.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-903 (Supp. 1996) 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

As of the date of separation from employment, October 15, 2001, the claimant has been tending to his mother on a full-time basis. Therefore, the claimant is not able available or actively seeking employment.

## 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 (Supp. 1996). Benefits are denied for the week beginning October 14, 2001 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claim Specialist is modified.

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W Rosselli, 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 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, 2001. 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 : November 30,2001  
THJ/Specialist ID: WCP1A  
Seq No: 002  
Copies mailed on December 12, 2001 to:  
KWAKU O. KUSHINDANA  
OFFICE OF EMPLOYMENT DEVEL A03  
LOCAL OFFICE #61  
OFFICE OF EMPLOYMENT DEVEL A03