

- DECISION -

Claimant:
SHARON R BRUCE

Decision No.: 1156-BR-13

Date: March 20, 2013

Appeal No.: 1300328

Employer:

S.S. No.:

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: April 19, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant filed a claim for unemployment benefits establishing a benefit year beginning November 20, 2012 with a weekly benefit amount of \$223.00.

The claimant resides on Smith Island. Smith Island has a population of just over 100 people and is accessible only by boat. There is no public transportation. In the winter months, the ferry boat leaves Smith Island for Crisfield, Maryland at 7:30 a.m. and departs Crisfield for Smith Island at 12:30 p.m.

There are three businesses on the island: (1) the Smith Island Baking Company¹; (2) the island's local restaurant where the claimant works from May through October; and (3) a marine fuel dock that is operated solely by its owner's family. There are, therefore, only two businesses for which the claimant could apply for work – one of which the claimant was laid off for lack of work. The first two listed businesses close for the winter season from late October until the beginning of May each year.

The claimant has applied to all the businesses on Smith Island for any and all available work through the week ending December 1, 2012. However, because the businesses are not re-opening until May 2013, this was the doing of a useless thing.

Because Smith Island is so small, the claimant does not own a car. The claimant walks to work. It is an economic impossibility for the claimant to work in Crisfield because she would have to pay for the ferry and pay for lodging because of the unavailability of ferry transportation back home after a full-time shift after 12:30 p.m. Therefore, the claimant has not made a job search outside of Smith Island.

The claimant worked in the past caring for an individual on the island, but no such work currently is available. But for the weak economic conditions and the unavailability of winter business on the island, the claimant is otherwise able to and available for work.

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).

¹ Their "Smith Island Cake" is the official dessert of the State of Maryland.

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. *Plaughter 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.

Having considered the claimant's testimony and argument, the legal issue before the Board is –

Can the Board grant the claimant the relief she seeks under *Section 8-903* of the law after making only two job contacts given the local economic market conditions?

For the following reasons, in this case the Board answers "yes".

In the appeal to the Board, the claimant makes an argument in support of her testimony at the hearing. The Board finds the claimant credible and that she honestly provided a complete picture of her search for work, the economic climate on Smith Island and the realistic prospects for available work in the area. The claimant resides on an island, isolated from the Eastern Shore and inaccessible by any mode of transportation other than by boat.

The Board is persuaded that the economic feasibility for the claimant to accept work off of Smith Island is impossible. Because of the limited availability of the ferry, the claimant would incur significant costs *if* she found a job in the Crisfield area.² The Board finds credible the claimant's contention that the costs of commuting and lodging in order to accept a job in Crisfield would "defeat the purpose" as it would cost more in expenses than it would in wages.

Md. Code Ann., Lab. & Empl. art., Section 8-903(a) provides, in pertinent part

(2) In determining whether an individual actively is seeking work, the Secretary shall consider:

(i) whether the individual has made an effort that is reasonable and that would be expected of an unemployed individual who honestly is looking for work; and

² The Board takes official and judicial notice of the devastation to the Town of Crisfield from Hurricane Sandy in late October 2012. *Baltimore Sun*, "Still Recovering from Sandy – Crisfield Braces for Next Storm", January 13, 2013.

(ii) the extent of the effort in relation to the labor market conditions in the area in which the individual is seeking work.

The hearing examiner made no analysis regarding this provision of the law in the January 25, 2013 decision. The Board finds sufficient evidence in the record to render a decision.

This is a case of first impression for the Board. The Board cannot contemplate of a set of facts more compelling than those in this case where a claimant's search for work can consist of a total of two job contacts and are sufficient to meet the requirements of *Section 8-903*. The claimant in this case is a victim of geographic and economic circumstances. The Smith Island economy consists of three small businesses and private individual waterman fishing enterprises. These businesses regularly cease operations during the winter season from late October to early May. The Smith Island labor market consists of the small island's inhabitants. Economic market conditions on the Smith Island dissipate in late October and do not return until early May.

The reasonable access to other job markets is truncated because of the unavailability of regular transportation to and from the island. The Board has no doubt that the claimant is an able, hard worker who would accept any reasonable employment offer. The Board is also persuaded that the claimant has made every reasonable effort that would be expected of a similarly-situated individual who is honestly looking for work given the market conditions in the area in which she is seeking work.

Therefore, the Board finds in this particular case, and on these unique facts, that the claimant has satisfied her obligations of demonstrating that she is able, available and actively seeking work within the meaning of *Section 8-903*.

The Agency, duly notified of the date, time and place of the hearing, failed to appear to present any evidence to contradict the claimant's testimony and evidence or to make legal argument to the contrary. The Board finds the claimant's testimony un-contradicted and credible.

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 met her burden of demonstrating that she 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 hearing examiner's decision shall be reversed for the reasons stated herein.

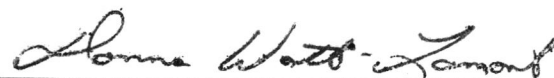
DECISION

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 December 2, 2012.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

SHARON R. BRUCE

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHARON R BRUCE

SSN #

vs.

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: 1300328

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

January 25, 2013

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

FINDINGS OF FACT

The Claimant (Sharon Bruce) filed a claim for unemployment insurance benefits establishing a benefit year beginning November 20, 2012 with a weekly benefit amount of \$233.00.

From the week beginning December 2, 2012 through the date of this hearing, January 22, 2013 the Claimant did not make any job contacts. The Claimant stated as the reason for this that she lives on Smith Island, Maryland and that there is no work available in the winter months. The Claimant further claims that the only boat leaving the island leaves at 7:30 a.m. and returns at 12:30 p.m. There are no cars or buses on the island and that she has to walk to work. The Claimant has further only made two (2) job contacts for the week ending December 1, 2012 because there are the only two (2) businesses that offer employment on the island.

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.

Section 8-903 does not specifically require that a claimant make personal job contacts, although that is the usual standard which is applied. The standard contained in the statute is whether the efforts an individual has made to obtain work have been reasonable and are such efforts as an unemployed individual is expected to make if he/she is honestly looking for work. Smith, 684-BR-83.

The Secretary shall exempt only from the "actively seeking work" eligibility condition a Claimant who, at the time the Claimant files an initial claim, provides a definite return-to-work date to the same employer that is within 10 weeks of the last day of employment, if the: (a) Return-to-work date is verified by that employer; and (b) Layoff is as a result of vacation, inventory, or any other purpose causing unemployment, except a labor dispute. Code of Maryland Regulations 09.32.02.07.

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 evidence establishes that the Claimant did not make an active search for work within the meaning of the Maryland Unemployment Insurance Law during the week from December 2, 2012 through the date of this hearing, January 22, 2013. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that she seeks benefits. It is not permissible to cease looking at any time while still in claim status. In the instant case, as the Claimant has failed to make an active search for work, she will be disqualified from receiving benefits.

DECISION

IT IS HELD, that the Claimant was 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 December 2, 2012, and until the Claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is modified.

L Williamson

L Williamson, 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 February 11, 2013. 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: January 22, 2013
BLP/Specialist ID: WCU5U
Seq No: 002
Copies mailed on January 25, 2013 to:

SHARON R. BRUCE
LOCAL OFFICE #63
SUSAN BASS DLLR