

- DECISION -

Claimant:	Decision No.:	1163-BR-11
WILLIAM H BARTENFELDER	Date:	March 16, 2011
	Appeal No.:	1020495
Employer:	S.S. No.:	
MD TRANSPORTATION ADMINISTRATION	L.O. No.:	60
	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: April 15, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact and conclusions of law. 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)*.

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MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • ALEXANDER M. SANCHEZ, SECRETARY



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 09.32.06.02(E)*.

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. *Plaugh 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. Additionally, 8-903 (b) provides that a disability of a qualified individual may not be used as a factor in finding that an individual is not able, available and actively seeking work.

In this case, the claimant has a bona fide, documented, medical reason for seeking only day-time work. That is the only limitation or restriction on the claimant's availability or ability to work. He has experience and training as a manufacturing supervisor. Those positions are available during the day-time hours. It would be unreasonable to expect the claimant to seek and accept work for a shift his doctor has specifically advised him to avoid. The claimant established that he has been actively seeking appropriate work and is able to accept an offer of day-time work without other limitation. The Board is satisfied that the claimant has met his burden of proof and established that he is able to work, available for work and actively seeking work for the time period relevant to this matter.

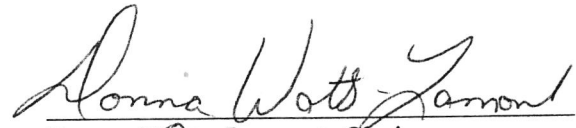
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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.

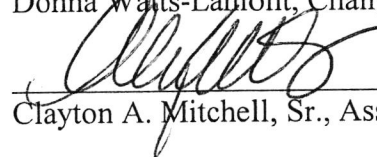
DECISION

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 May 2, 2010.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

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UNEMPLOYMENT INSURANCE APPEALS DECISION

WILLIAM H BARTENFELDER

SSN #

Claimant

vs.

DEPT OF TRANSP 290201

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: 1020495

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

June 29, 2010

For the Claimant: PRESENT

For the Employer: PRESENT , DEPT. OF TRANSPORTATION

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 filed for unemployment insurance benefits establishing a benefit year effective May 2, 2010 with a weekly benefit amount of \$410.00.

The claimant was employed from March 9, 2009 to April 30, 2010. At the time of separation, he was working full time as a supervisor of bus maintenance, earning \$50, 888.00 per year. His hours were 12 midnight to 8:00 am, Sunday to Friday.

The claimant had a seizure in November 2009. He went to the hospital and missed a few days of work. He saw a neurologist, Dr. Boyd Dwyer, on November 24, 2009. The doctor did not place the claimant on medication, but did advise him that he should work day shift only for medical reasons. He stated that the

seizure was because of sleep deprivation and if they continued, could lead to a heart attack or stroke.

The claimant gave his doctor's note to his immediate supervisor, David Mokshefski. He asked to be transferred to the day shift.

The claimant had another seizure at home in December 2009. He did not go to the hospital and did not miss work. He did not tell the employer about this seizure.

The claimant never heard about the transfer to day shift. He did not follow up about with his supervisor or human resources. He turned in a resignation letter on March 1, 2010. He did not offer a reason for the resignation.

The claimant has been seeking full time work as a manufacturing supervisor. He makes two job contacts per week. The customary hours for such work are 24 hours per day. The claimant only applies for day shift work. If the job listing requires working the second or third shift, the claimant does not apply. If not for the seizures, the claimant would be willing to work any shift and would not have left his job.

The claimant produced medical documentation that he was advised to work day shift only.

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.

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 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 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 not been met. The claimant acknowledged that he is restricting his job search to day shift only because of health reasons. Thus, he has not satisfied the requirements of Title 8, Section 903. Nor is he entitled to sick claims under Section 907. In order to qualify for sick claims, an individual must be able to work when he/she enters claim status and later suffer a disabling injury or illness. Since the claimant was not able and available when he initially filed, the claimant does not qualify for sick claims.

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 May 2, 2010 and until the claimant is fully able, available and actively seeking work.

The determination of the Claims Specialist is affirmed.



R M Tabackman, 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 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 July 14, 2010. 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: June 17, 2010
DW/Specialist ID: WCU2E
Seq No: 001
Copies mailed on June 29, 2010 to:
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