

- DECISION -

Claimant:
AMY L KERRICK

Decision No.: 1187-BR-14

Date: May 14, 2014

Appeal No.: 1336787

S.S. No.:

Employer:
MONTGOMERY CO GOVERNMENT

L.O. No.: 63

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: June 13, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's 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. *Plaugher 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 her appeal, the claimant offers multiple specific contentions of error as to the findings of fact and the conclusions of law in the hearing examiner's decision. Because the Board generally agrees with the claimant's contentions, the Board will not specifically address all of them here.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner's findings of fact and conclusions of law. The Board finds that the hearing examiner applied too strict an interpretation of the elements of §8-903.

The Board, in *Connor v. City of Baltimore, 416-BR-87*, held: "A claimant who is restricted from performing certain work is not disqualified under Section 8-903 if he shows that he is able to do other work and is, in fact, seeking other work that he is capable of performing..." The claimant's disability limits her to working primarily from home. It does not limit the types of work she can perform to duties for which she has no experience, trainings or education. The claimant can perform a variety of different job duties, from her home, and has been trying to find a position which would allow her to do so. The

claimant is able to work within the meaning of §8-903, even if that work is somewhat different from what she was most recently doing. The claimant's disability is more of a restriction upon the place from which she can perform work than upon the actual work she can do. The Board does not find this makes the claimant unable to work.

The Board does not find the fact that the claimant has primarily been seeking other positions with her current employer to be indicative of an unsatisfactory work search. The claimant would prefer to stay with this employer so she would not lose the benefits of her prior years of service. This is a reasonable preference. The claimant is not, however, limiting herself to only this employer. She has sought work elsewhere. There is not a mandatory minimum number of job contacts a claimant must make. Generally, the Agency considers two per week to be sufficient. However, if there are not two suitable positions to which a claimant may apply in any given week, the claimant should not be penalized for not making two job contacts in that week. A claimant is not required to put form over substance and apply for position for which she is neither qualified nor willing to accept simply to have applied for a certain number of jobs. The claimant is engaged in an active, if somewhat limited, work search designed to return her to gainful employment in a position for which she had training, education or experience, and which she is able to perform, in a reasonable amount of time.

The claimant has established her availability for work which is within the restrictions of her medical disability. The Board is satisfied that the claimant has met the requirements of §8-903. The claimant is eligible for benefits if she is otherwise qualified and entitled.

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 her burden of demonstrating that she was able, available, and actively seeking work, effective November 24, 2013, 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 November 24, 2013.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

AMY L. KERRICK

MONTGOMERY CO GOVERNMENT

SUSAN BASS DLLR

MONTG CO GOVERNMENT

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AMY L KERRICK

SSN #

Claimant

vs.

MONTGOMERY CO GOVERNMENT

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: 1336787

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

January 21, 2014

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, Ms. Kerrick, initiated a claim for unemployment insurance benefits effective November 24, 2013. The claimant qualifies for a weekly benefit of \$430. The claimant's last employment was with Montgomery County government.

The Office of Unemployment Insurance imposed a penalty upon the claimant for the week beginning November 24, 2013, and until the claimant is meeting the requirements of the law. The penalty was imposed as a result of an issue as to whether the claimant is in compliance with the requirements of Section 903 of the Maryland Unemployment Insurance Law.

The claimant has substantial health issues. The claimant has a neurological disease, Dysautonomia. According to her doctor...“this is a disabling condition where the autonomic functions of the body don't

work appropriately.” The claimant has submitted two medical reports indicating that she should work primarily from home.

Since the claimant initiated her claim for unemployment insurance benefits she indicates that she has made 17 job contacts. Twelve of these job contacts were to her employer, Montgomery County government, regarding returning to her position with that employer. The claimant has only contacted three other employers regarding finding new employment.

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 8-903(b) states that the Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under Section 8-903(a)(1)(i).

Where a claimant makes an honest and active search for work, no disqualification is imposed under Section 8-903. Nachand, 181-BH-84.

While Section 8-903 does not demand that a claimant look for work 24 hours per day, seven days per week, looking for work must be a claimant's primary activity. Where a claimant was immersed in her summer school studies, and limited job contacts to inquiries by telephone or through the newspaper, the claimant did not meet the eligibility requirements of Section 8-903. Poole, 145-BH-84.

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.

EVALUATION OF EVIDENCE

The claimant initiated a claim for unemployment insurance benefits effective November 24, 2013. The Office of Unemployment Insurance imposed a penalty upon the claimant for the period beginning November 24, 2013. Since that date the claimant has not been physically able to engage in full-time employment. Unfortunately, the claimant's medical condition (Dysautonomia) prevents her from engaging in substantial and meaningful employment outside of her home. Therefore, the claimant does not meet the requirements of being a “qualified” individual was a disability.


The evidence further establishes that the claimant has not made an active search for work within the meaning of the Maryland Unemployment Insurance Law from the week beginning November 24, 2013 and thereafter. 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 is not physically able to engage in full-time employment and has failed to make an active search for work. She will be disqualified from receiving benefits pursuant to Md. Code Ann., Labor & Emp. Article, Section 8-903.

DECISION

IT IS HELD THAT the claimant is not able or actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are denied from the week beginning November 24, 2013, and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



S B Karp, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 February 05, 2014. 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 15, 2014

BLP/Specialist ID: WCU42

Seq No: 002

Copies mailed on January 21, 2014 to:

AMY L. KERRICK
MONTGOMERY CO GOVERNMENT
LOCAL OFFICE #63
SUSAN BASS DLLR