

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street  
Baltimore, Maryland 21201  
(301) 333-5033



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**BOARD OF APPEALS**

Thomas W. Keech, Chairman  
Hazel A. Warnick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

	Decision No.:	1197-BR-88	
	Date:	Dec. 23, 1988	
Claimant:	Rose Jones	Appeal No.:	8809041
		S. S. No.:	
Employer:		L. O. No.:	45
		Appellant:	CLAIMANT

Issue: Whether the claimant is able for work, available for work and actively seeking work within the meaning of Section 4(c) of the law; whether the claimant was overpaid benefits within the meaning of Section 17(d) of the law.

**—NOTICE OF RIGHT OF APPEAL TO COURT —**

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

January 22, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner and concludes that the claimant should not be disqualified under Section 4(c) of the law.

The primary issue to be addressed at the hearing was Section 6(d) of the law. While Section 4(c) is always a potential issue (see Appeal Hearing Notice) the only evidence relevant to Section 4(c) was the claimant's testimony that she did not have a car and was therefore limiting her search for work to places accessible by public transportation. The Hearing Examiner did not explore this issue further and did not notify the claimant that he would be ruling on it. Based solely on this one statement from the claimant, he disqualified her under Section 4(c).

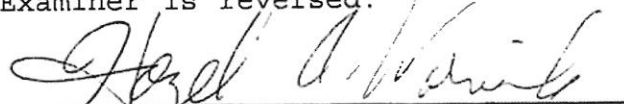
Although the evidence on this issue is skimpy, a disqualification based solely on the claimant's lack of private transportation is not sustainable. See, Ervin v. Government Service Savings and Loan, 297-BR-85 (where claimant does not have private transportation, but is willing to accept work at any location which can be reached by public transportation within the normal working day, no disqualification is imposed under Section 4(c)). Therefore, the decision of the Hearing Examiner is reversed. Any overpayment under Section 17(d) that arose as a result of the Hearing Examiner's decision is also reversed.

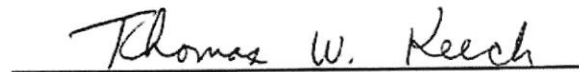
#### DECISION

The claimant was able and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The claimant is not overpaid benefits under Section 17(d) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT  
UNEMPLOYMENT INSURANCE - NORTHWEST  
Recoveries - Room 413

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 383-5040

STATE OF MARYLAND  
William Conrad Schaeffer  
Governor

— DECISION —

Date: Mailed 10-6-88  
Claimant: Rose M. Jones Appeal No.: 8809041  
S.S. NO.:  
Employer: LO. No.: 45  
Appellant: Claimant

Whether the claimant failed, without good cause to apply for or to accept, available, suitable work, within the meaning of Section 6(d) of the Law. Whether the claimant was overpaid benefits within the meaning of Section 17(d) of the Law.

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- NOTICE OF RIGHT OF FURTHER APPEAL -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 318, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.  
THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON 10-21-88  
NOTICE. APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

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- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

FINDINGS OF FACT

The claimant has a benefit year beginning May 15, 1988. The claimant is presently unemployed.

The claimant states and it is taken as a matter of fact that although there was an alleged job interview set for her with Bendix Field Engineering on May 26, 1988, the claimant after numerous attempts could not contact a Mr. Schaeffer, of the Bendix Field Engineering Company, to set up an appointment for her job interview. The claimant states that she was informed by Doris Jones, DEED Office at Westminster, that Mr. Schaeffer would be the one and would have to be the one to contact to set

up her interview. Although we do take the claimant-s testimony as a matter of fact, it is also held that the claimant because she must by her own statement take a position of employment which is subject to and can be reached by public transportation, the claimant is unreasonably restricting her availability to the work force.

CONCLUSIONS OF LAW

Section 4(c) of the Law provides that an unemployed individual is eligible to receive benefits only if it is determined that he/she is able to work, available for work, and actively seeking work. In the case Robinson v. Employment Security Board (202-MD-515), the Court of Appeals upheld the principal that a claimant may not impose restrictions upon his/her willingness to work and still be available as the Statute requires. Also, in Employment Security Board v. Porborough (195-MD-197), the Court held that a claimant's unavailability for work warranted the denial of benefits. It is held as a matter of Law that the claimant has restricted her availability for gainful employment in that the claimant insist that she can and will only take a job which is ameanable to public transportation access.

DECISION

The claimant was not able and available for work under Section 4(c) of the Maryland Unemployment Insurance Law. The claimant shall be denied benefits for the week beginning May 22, 1988, and until she meets the requirements of the Law.

The claimant is found to have been issued an overpayment in the amount of \$525.00 and which amount is to be recovered pursuant to the provisions of Section 17(d) of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner pursuant to the provisions of Section 6(d) of the Maryland Unemployment Insurance Law is hereby reversed.

*Leslie S. Goldstein (sk)*  
Leslie S. Goldstein  
Hearing Examiner

Date of Hearing: 9-7-88  
sk  
5285/Specialist ID: 15702  
Copies mailed on 10-5-88 to:

Claimant  
Unemployment Insurance - Northwest (MABS)  
Recoveries - Room 413