

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary
Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	1212-BH-91	
	Date:	October 4, 1991	
Claimant:	Alton Small	Appeal No.:	9104280
		S. S. No.:	
Employer:	Mel McLaughlin Co. Corp.	L. O. No.:	40
		Appellant:	CLAIMANT

Issue: Whether the claimant failed, without good cause, to apply for or to accept available, suitable work, within the meaning of Section 8-1005(a) of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES

November 3, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Alton Small, Claimant
Vernell Wilson, Witness
Frances Dziennik, Attorney

Employer not
represented

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The Board found the testimony of the claimant and his witness before the Board of Appeals to be credible. As such, this testimony carries more weight than the contrary hearsay testimony before the Hearing Examiner.

FINDINGS OF FACT

The claimant was employed for approximately two years for the Mel McLaughlin Company, the employer in this case. He worked as both a truck driver and a truck foreman. After August of 1990, because of a lack of work, he transferred from the job of truck foreman to the job of truck driver. As a truck driver, he worked 28.5 hours in September of 1990 and 50 hours in October of 1990. His last day of work was October 18, 1990, when he was laid off from work. From that point on, the claimant received no offers of work of any kind, with the exception of the incident noted immediately below. On December 27, 1990, the claimant received a mailgram at approximately 2:30 p.m. to work that day. The claimant immediately called the foreman, but the foreman told him that no work was available. No prior or subsequent offers of work were made to the claimant.

CONCLUSIONS OF LAW

Since the claimant was not offered work of any kind, no penalty may be imposed upon him under Section 8-1005 of the law.

DECISION

The claimant did not refuse suitable work within the meaning of Section 8-1005 of the Labor and Employment Article. No disqualification is imposed under that section of the law based on any alleged refusals of work with this company.

The decision of the Hearing Examiner is reversed, based upon the facts found by the Board.

Thomas W. Keech

Chairman

Harold A. Warrick

Associate Member

Donna P. Watts

Associate Member

K:W:W

kbm

Date of Hearing: August 20, 1991

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Frances Dziennik, Esq.
5 Center Place, 2nd Fir.
Baltimore, MD 21222

UNEMPLOYMENT INSURANCE - EASTPOINT

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5041

— D E C I S I O N —

Date: Mailed: 04/12/91
Appeal No.: 9104280
S. S. No.:
Claimant: Alton H. Small
Employer: Mel McLaughlin Company Corp.
L. O. No.: 40
Appellant: Employer

Issue: 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.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

April 29, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Arthur
Cunningham,
Vice President

Other: Renee Gordy,
Claims
Specialist;
Michael
Piper,
Job Service

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits establishing a benefit year beginning September 30, 1990 and a weekly benefit amount of \$213.

The claimant had previously worked for the employer as a truck driver earning \$10.00 per hour. The testimony established that the employer had offered work as a truck driver to the claimant numerous times since the claimant became unemployed. However, the claimant failed to accept any of these offers of work.

The Claims Examiner allowed benefits because of a determination by the Maryland Job Service, that the work offered to the claimant by the employer was unsuitable, because the claimant had only been offered 78.5 hours of work in a nine week period.

The testimony disclosed that the Maryland Job Service determination of unsuitability was incorrect. The claimant was a truck driver prior to being unemployed, and was offered work as a truck driver by the employer. This should have been deemed suitable work by the Maryland Job Service.

CONCLUSIONS OF LAW


It is concluded from the evidence presented at the appeal hearing, that the claimant failed to accept suitable work, within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law.

The claimant had previously worked as a truck driver, and he was offered work as a truck driver by the employer. This should have been deemed suitable work by the Maryland Job Service. Since the Maryland Job Service acknowledged that its original determination of unsuitability was incorrect, and the Claims Examiner based her allowance of benefits on this incorrect determination, the determination of the Claims Examiner should be reversed.

DECISION

The claimant failed to accept suitable work, within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. The claimant is disqualified from receiving benefits from the week beginning October 14, 1990 and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount (\$2,130) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Regina Tabackman
Hearing Examiner

Date of Hearing: 04/03/91
dma/Specialist ID: 40349
Cassette No. : 3430
Copies mailed on 04/12/91 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)