

- DECISION -

| | | |
|------------------|---------------|-------------|
| Claimant: | Decision No.: | 1270-BR-13 |
| HULIANA ROMUALDO | Date: | May 3, 2013 |
| | Appeal No.: | 1242679 |
| | S.S. No.: | |
| Employer: | L.O. No.: | 63 |
| | Appellant: | Claimant |

Issue: 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.

- 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 3, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the additional findings of fact and finds that a modification of the hearing examiner's decision is warranted.

The claimant always had the availability of a flexible school schedule, even prior to December 2012. The claimant had made an active search for work with jobs that traditionally ended at 5:00 p.m. At the point in time the claimant was offered a job, the job required the claimant to work until 6 p.m. which appeared to conflict with her school schedule. The claimant, however, with due diligence, was able to secure a flexible school schedule.

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'ship 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'ship 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'ship 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.

While § 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. When school studies are the claimant's primary focus and interfere with the primary activity of seeking work and negatively affect a claimant's "ability and availability" to accept all appropriate employment offers, the claimant does not meet the eligibility requirements of § 8-903. See, e.g., *In re: Poole, 145-BH-84*.

A claimant whose school schedule does not materially affect his job search, on the other hand, may be able and available for work within the meaning of § 8-903. See, e.g., *In re: Clasing, 95-BH-90* (the claimant's attendance two hours per week in an educational program did not interfere with his ability to

work or with his work search). There is no reason to disqualify a claimant under the availability provisions when his part-time classes have been arranged to be flexible enough to change to accommodate any work schedule. *In re: Mallet, 1132-BR-92*. In addition, a claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. *Drew-Winfield v. Patuxent Medical Group, 87-BH-87*.

In the instant case, the claimant made an active search for work. The claimant did not have a school schedule that would have prohibited her from accepting otherwise suitable work. The Board disagrees with the hearing examiner's conclusion that the claimant was not able and available for work for the weeks prior to December 23, 2012 because her school schedule was never a factual cause to refuse suitable work.

The Board notes that the Agency, duly notified of the date, time and place of the hearing, failed to appear. The Board finds the claimant's testimony credible and uncontradicted.

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 from the week beginning November 25, 2012. The claimant is eligible for benefits thereafter, provided she meets the other requirements of the law.

The hearing examiner's decision shall be modified for the reasons stated herein.

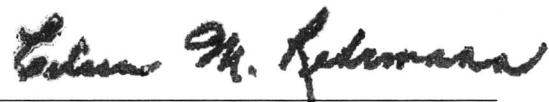
DECISION

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 25, 2012.

The Hearing Examiner's decision is modified.



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

HULIANA ROMUALDO

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

HULIANA ROMUALDO

SSN #

Claimant

vs.

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: 1242679

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

January 18, 2013

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, Huliana Romualdo, filed a claim for unemployment insurance benefits, establishing a benefit year effective November 25, 2012, and a weekly benefit amount of \$196.00. The Claim Specialist denied benefits from November 25, 2012 until meeting the requirements of the law.

The claimant was attending school four days a week from 5:30 p.m. to 10:30 p.m. In the third week of December, 2012, the claimant worked out an agreement with the school to change her hours to accommodate any schedule required by an employer. If an employer needed the claimant to work until 6:00 p.m., the school agreed to let her make up the hours at another time. In order to accommodate an employer with an evening shift, the school would allow the claimant to take her classes during the day. The claimant was making two or more contacts per week for positions as a medical and dental receptionist, a care giver and a medical assistant. The claimant has no medical restrictions on her ability to work.

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.

There is no reason to disqualify a claimant under the availability provisions when his part-time classes have been arranged to be flexible enough to change to accommodate any work schedule. Mallett, 1132-BR-92.

EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, she was able, available and actively seeking work during the period in question, as defined by Maryland Unemployment Insurance Law. In the case at bar, the claimant met this burden.

The claimant testified that she was worked out an agreement with the school as of December 21, 2012 to change to hours to accommodate any employer. Therefore, the claimant's availability was restricted from November 25, 2012 to December 22, 2012, but was available for any shift from December 23, 2012 forward.

Accordingly, while the claimant did not meet the requirements of Section 8-903 from November 25, 2012 to December 22, 2012, I hold the claimant met her burden in this case and adequately proved she was available for work, as of December 23, 2012, and benefits are, therefore, allowed as of that date.

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. Benefits are denied from November 25, 2012 to December 22, 2012.

IT IS FURTHER HELD THAT the claimant is fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903 as of December 23, 2012. Benefits are allowed from December 23, 2012, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.

E K Stosur

E K Stosur
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 04, 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 14, 2013

BLP/Specialist ID: WCU4M

Seq No: 001

Copies mailed on January 18, 2013 to:

HULIANA ROMUALDO

LOCAL OFFICE #63

SUSAN BASS DLLR