

- DECISION -

Claimant:	Decision No.:	1345-BR-15
ROSELYN T SEPLAH	Date:	June 19, 2015
	Appeal No.:	1425063
	S.S. No.:	
Employer:	L.O. No.:	65
	Appellant:	Claimant

Issue: Whether the claimant failed to file proper claims for benefits within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 901.

- 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: July 20, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on December 18, 2014. That Decision held the claimant was not fully able, available and actively seeking for work, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, and therefore ineligible for benefits, from the week beginning August 10, 2014 and until the claimant was meeting the requirements of the law.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or

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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)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The claimant and the agency appeared and testified. The claimant and the agency were afforded the opportunity to present documentary evidence and to make a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to conduct its own hearing, or allow additional argument. However, the Board will move into evidence the copy of the claimant's United States of America Employment Authorization Card, #MSC1590017178, provided by the claimant with her letter of appeal to the Board. The Board enters into evidence as *Claimant's Exhibit B1*, the United States of America Employment Authorization Card, #MSC1590017178, assigned to the claimant, and dated as valid from January 2, 2015 until January 1, 2016.

The Board finds that the hearing examiner's *Findings of Fact* are supported by substantial evidence in the record. The Board adopts the hearing examiner's *Findings of Fact*. The Board makes the following additional *Finding of Fact*:

The claimant was authorized to work in the United States of America as of January 2, 2015. *See Claimant's Exhibit B1*.

The Board concludes that these facts warrant a reversal of the hearing examiner's decision.

Md. Code Ann., Lab. & Empl. Art., §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.

The claimant has the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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)*.

Being available for work is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. A claimant is expected to be willing to work most

hours of most days in which work is performed in the usual occupation or business in which the claimant is seeking employment. A claimant is not required to be available to work twenty-four hours per day, seven days per week, but must not unduly restrict the hours or days he or she is willing to work. A claimant is also expected to be prepared to accept an offer of work without limitations such as a lack of transportation or child care. A claimant is not required to have made prior arrangements, but is expected to be able to do so in order to accept an offer of suitable work. A claimant is not expected to violate a religious principle or endanger his or her health or well-being, simply to establish availability for work.

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).

With her appeal, the claimant has provided documentation attesting that she is legally permitted to work in the United States of America. *Claimant's Exhibit B1* establish that the claimant had no substantial restrictions on her ability to work as of January 2, 2015.


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 did meet her burden of demonstrating that she was able, available, and actively seeking work, from the week beginning January 4, 2015, 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 January 4, 2015.

The Hearing Examiner's decision is reversed.


Donna Watts-Lamont, Chairperson


Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

ROSELYN T. SEPLAH

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ROSELYN T SEPLAH

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: 1425063

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

December 18, 2014

For the Claimant: PRESENT

For the Employer:

For the Agency: PRESENT, MICHAEL MILLER

ISSUE(S)

Whether the claimant has filed proper claims for Unemployment Insurance benefits within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 901, 907 or 1006.

FINDINGS OF FACT

The claimant, Roselyn Seplah, filed a claim for unemployment insurance benefits, establishing a benefit year effective August 10, 2014, and a weekly benefit amount of \$420.00. The Claim Specialist denied benefits the week beginning August 10, 2014, until meeting the requirements of the law, because the claimant, an alien, failed to provide the required information, as requested, to resolve questions concerning his residency status, contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Sections 901 and 905.

The Agency asked the claimant to submit her Registration Card to prove her eligibility for benefits. The claimant had an alien registration card but it expired in March 2013. The claimant applied for a visa on

June 9, 2012. On February 24, 2014, the United States Department of Homeland Security notified the claimant that her petition was approved. The notice from Homeland Security specifically states that it is not a visa and should not be used in place of a visa. The document also indicates that the "approval of this via petition does not in itself grant any immigration status". To date, the claimant does not have a new Alien Registration Card nor does he have any document that attests that she is legally able to work in the United States.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-901, provides that an individual who files a claim in accordance with regulations adopted under this title is eligible to receive benefits with respect to any week if the individual meets the requirements of this subtitle.

Md. Code Ann., Labor & Emp. Article, Section 8-905, provides that an alien is not eligible for benefits unless at the time the covered employment was performed the alien was admitted to the United States lawfully for permanent residence, lawfully present to perform covered employment or otherwise residing permanently in the United States under color of law.

EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, he/she was in the United States lawfully and had legal authority to perform covered employment. In the case at bar, the claimant met this burden.

The claimant failed to present any documentary evidence confirming her status as a legal, resident alien, eligible to work within the United States during the time period in question. The claimant did present additional documents that indicate she is in the process of gaining her green card. However, the claimant has presented no document that references her legal right to work.

Accordingly, the claimant has failed to meet her burden in this case and, benefits are not allowed.

DECISION

IT IS FURTHER HELD THAT the claimant failed to file valid and proper claims for benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-901 and COMAR 09.32.02.04B. Benefits are denied for the week beginning August 10, 2014, and until meeting the requirements of the law.

The Determination of the Claims Examiner is affirmed.

K. Boettger

K. Boettger, 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 January 05, 2015. 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: December 01, 2014
CH/Specialist ID: USB1D
Seq No: 003
Copies mailed on December 18, 2014 to:

ROSELYN T. SEPLAH
LOCAL OFFICE #65
SUSAN BASS DLLR