STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

BOARD OF APPEALS
1100 North Eutaw Street, Room 515
Baltimore, MD 21201
Donna Watts-Lamont, Chairperson

-DECISION-

Claimant:
HELEN H MALAY

Employer:

,

Decision No.: 14-BR-15

Date: January 21, 2015

Appeal No.: 1418372

S.S. No.:

L.O. No.: 65

Appellant: Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: February 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 August 25, 2014. That Decision held the claimant was not engaged in an active work search, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning July 6, 2014 through the week ending August 9, 2014.

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 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 record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to present documentary evidence and to make a closing statement. The employer also appeared and participated in the hearing. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument. Sufficient evidence exists in the record from which the Board may make its decision.

The Board, after correcting the date in the second sentence of the second paragraph to "June 29, 2014", finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts, however, are insufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact but concludes that these facts warrant different conclusions of law and 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)*.

An active work search 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 seek work diligently so as to return to gainful employment as soon as practical. A claimant is expected to seek work in field for which he or she has training, education, or experience and to seek work which he or she is willing and able to accept and perform. 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).*

In her appeal, the claimant questions how this decision could have been reached as she provided evidence, in the form of her testimony and her work search logs, showing clearly that she was making the requisite job contacts each week.

The claimant's documentary evidence established that she was making adequate job contacts each week since she separated from employment, with the exception of the weeks beginning July 20 and 27, 2014. The claimant was not seeking work during those weeks because she had been offered full-time employment, starting August 1, 2014, which she had accepted. The claimant had no need to continue to seek work once she accepted a new position. Unfortunately, when the claimant reported for this new job on August 1, 2014, she was informed that the criteria for employment had been changed and her offer was being rescinded. The claimant should not be penalized for not seeking work during this two-week period.

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 actively seeking work, from the week beginning June 29, 2014, 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.

Because the claimant was not available for work from June 29, 2014 through July 12, 2014, (See companion appeal number 1418371 issued concurrently) she is not entitled to benefits for those weeks, regardless of her work search.

DECISION

The Board holds that the claimant was 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*. The claimant is eligible to receive benefits from the week beginning June 29, 2014, so long as the claimant is meeting the other requirements of the law.

The Hearing Examiner's decision is Reversed.

Donna Watts-Lamont

Donna Watts-Lamont, Chairperson

Eileen M. Rehrmann

Eileen M. Rehrmann., Associate Member

VD
Copies mailed to:
HELEN H. MALAY
SUSAN BASS DLLR
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

HELEN H MALAY

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: 1418372
Appellant: Claimant
Local Office : 65 / SALISBURY CLAIM CENTER

August 25, 2014

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

FINDINGS OF FACT

The claimant, Helen H. Malay, filed a claim for unemployment insurance benefits, establishing a benefit year effective June 29, 2014, and a weekly benefit amount of $320.00. The Claim Specialist denied benefits the week beginning July 6, 2014 until meeting the requirements of the law because during the week ending July 12, 2014, the claimant failed to make an active search for work contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Section 903.

At all relevant periods of time, the claimant was both mentally and physically able to work. Since August 10, 2014, the claimant has actively sought work by making at least two (2) job contacts per week in the areas of employment in which the claimant has prior experience and/or skills and abilities. The claimant had no childcare, eldercare, schooling or training classes restricting her availability for work. The claimant

had access to reliable transportation.

CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, § 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.

EVALUATION OF EVIDENCE

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

The claimant has shown that she has been able to work, available for work and actively seeking work since August 10, 2014. Accordingly, I hold the claimant met her burden in this case and was able to work, available for work and actively seeking work as defined by Maryland Unemployment Insurance Law and, provided the claimant meets all other eligibility requirements, benefits are allowed.

DECISION

IT IS HELD THAT the claimant is able, available and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, § 8-903. Benefits are allowed from the week beginning August 10, 2014 provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning other eligibility requirements of the law at ui@dllr.state.md.us or telephone (410) 949-0022 from the Baltimore region, or (800) 827-4839 from outside the Baltimore region. Deaf claimants with TTY may contact Client Information Service at (410) 767-2727, or outside the Baltimore region at (800) 827-4400.

The determination of the Claims Specialist is modified.

Deborah Camper

D F Camper, 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 of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 September 09, 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: August 19, 2014
DW/Specialist ID: USB3A
Seq No: 002
Copies mailed on August 25, 2014 to:

HELEN H. MALAY
LOCAL OFFICE #65
SUSAN BASS DLLR