

DECISION

Claimant:
KIM M SPELLER

Decision No.: 1506-SE-03

Date: June 03, 2003

Appeal No.: 0300194

Employer:
POTOMAC HOME SUPPORT INC

S.S. No.:

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland 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: July 03, 2003

- APPEARANCES -

FOR THE CLAIMANT:

KIM M. SPELLER

FOR THE EMPLOYER:

FAILED TO APPEAR

PRELIMINARY STATEMENT

The Board of Appeals has considered all of the evidence presented, including testimony offered at the hearings, documentary evidence introduced in the case, as well as the Department of Labor, Licensing and Regulation appeal file.

FINDINGS OF FACT

The claimant was discharged by the employer herein for a non-disqualifying reason. She had been working on a part-time basis because of her medical problems. The claimant is diagnosed with “end stage renal disease, hypertension, and anemia” requiring hemodialysis at least three times per week, see Claimant Exhibit #1. The claimant is a “qualified individual with a disability”.

The claimant is able to work, available for work and actively seeking work within the limits that her disability dictate.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Employment Article, Section 8-903(b) states that the Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under Section 8-903(a)(1)(i).

Allowing a claimant to receive unemployment benefits who is limited to part-time work as a result of her disability and who is genuinely attached to the labor market and is actively seeking and willing to accept jobs that exist to accommodate her disability, would not “fundamentally alter the nature” of the unemployment insurance program. Scribner v. Anthropologie Inc, 259-BH-03.

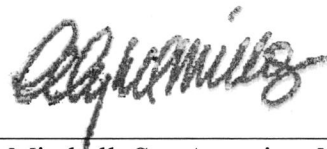
EVALUATION OF THE EVIDENCE

The claimant presented sufficient testimony and documentary medical evidence to support her position that she is able, available, and actively seeking work within the meaning of LE, Section 8-903 of the Maryland Unemployment Insurance Law. She presented credible evidence to reveal that she was a “qualified individual with a disability” and as such should not be disqualified from benefits due to restrictions of her disability.

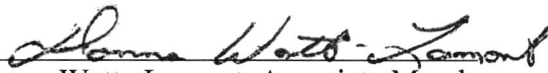
DECISION

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 December 1, 2002.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

RD

Date of hearing: April 28, 2003

Copies mailed to:

KIM M. SPELLER

POTOMAC HOME SUPPORT INC

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

KIM M SPELLER

SSN #

vs.

POTOMAC HOME SUPPORT INC

Claimant

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: 0300194
Appellant: Claimant
Local Office: 63 / CUMBERLAND
CLAIM CENTER

January 31, 2003

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

For the week beginning December 1, 2002 forward, the claimant has been able, available and actively seeking part-time work only because the claimant has end-stage renal disease and she needs to go to dialysis three afternoons per week. Therefore, the claimant is only available to work part-time.

CONCLUSIONS OF LAW

Md. Code of Ann., Labor & 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.

EVALUATION OF EVIDENCE

In the instant case, this Hearing Examiner finds the claimant has not been able, available and actively seeking work as required by Section 8-903 of the Maryland Unemployment Insurance Law since December 1, 2002, because the claimant is only available for part-time work, and therefore, she must be disqualified from receipt of benefits.

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 for the week beginning December 1, 2002 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

L N Nacht, 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 410-949-0022 or 1-800-827-4839. 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.

Notice of Right to Petition for Review

Any party 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 February 18, 2003. 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

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 21, 2003
JHH/Specialist ID: WOK1D
Seq No: 002
Copies mailed on January 31, 2003 to:
KIM M. SPELLER
POTOMAC HOME SUPPORT INC
LOCAL OFFICE #63