

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

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

— DECISION —

	Decision No.:	1535 -BR-92	
	Date:	Sept. 4, 1992	
Claimant:	Kenneth N. Gerberg	Appeal No.:	9211525
		S. S. No.:	
Employer:	Network Recruiters, Inc,	L. O. No.:	9
		Appellant:	CLAIMANT
Issue:	Whether the claimant failed, without good cause, to accept available, suitable work within the meaning of Section 8-1005 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 MAYBE 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

October 4, 1992

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant had a previous history of working for this employer at long-term, temporary assignments, the employment being virtually continuous for a long period of time. Months prior to the event about which this case is concerned, the work slowed. The claimant, unable to obtain continuous employment from this employer, signed on with six other temporary agencies and obtained employment through them. He later applied for unemployment insurance benefits.

After the claimant applied for unemployment insurance benefits, the employer contacted the claimant and offered him a three-day assignment in a Word Processing/Word Perfect Lotus position at \$8.50 per hour. The claimant declined the position because of its short-term nature and because he felt that the salary was inadequate. The claimant had earned \$9.50 per hour at his last assignment for this employer. He felt that his skills were increasing and that his skills were worth about \$9.50 per hour in the labor market.

During the same week, the claimant obtained an assignment from another temporary agency which was for a longer duration and at a higher rate of pay.

The suitability of offered employment depends in part upon whether the salary offered corresponds to the value of a claimant's skills in the labor market. The claimant has provided the best evidence possible that the salary was insufficient by showing that he immediately obtained another job paying a higher salary. This is direct labor market verification that the salary was insufficient.

The job assignment was for three days only. The Board has held in the past that a refusal of an extremely short-term assignment may be valid for that reason alone where the claimant is seeking more appropriate full-time work. In this case, the claimant was not seeking only full time work, and he had a continuous history of being a temporary worker. Nevertheless, the extremely short-term nature of the job, combined with the claimant's reasonable expectation of obtaining more stable temporary assignments, establishes good cause for refusing the job.

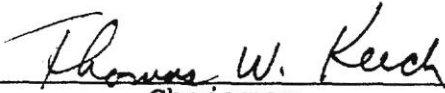
Considering both the wages and the duration of the job, the Board concludes that the claimant did not refuse suitable work, without good cause, within the meaning of Section 8-1005 of the Labor and Employment Article.¹

¹ The Hearing Examiner's quotation from the Barley case is inappropriate. The language quoted is an instruction to the courts on how to review the Board's decisions (which are the final decisions of the agency) on appeal. This language does not apply to the Hearing Examiner's consideration of the agency's first-level determinations. If it did, it would require the

DECISION

The claimant did not refuse suitable work, without good cause, within the meaning of Section 8-1005 of the Labor and Employment Article. No disqualification is imposed under this Section of the Law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:H

kmb

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CLAIMANT

UNEMPLOYMENT INSURANCE - TOWSON

opposite result than that reached by the Hearing Examiner in this case.

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

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Telephone: (410) 333-5040

— DECISION —

	Date:	Mailed:	6/22/92
Claimant:	Kenneth N. Gerberg	Appeal No.:	9211525
		S. S. No.:	
Employer:	Network Recruiters, Inc.	LO. No.:	09
		Appellant:	Employer

Issue: Whether the claimant failed, without good cause, to apply for or to accept available, suitable work within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1005. Whether the appeal was timely within the meaning of Section 806 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 BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

July 7, 1992

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK

— APPEARANCES —

FOR THE CLAIMANT:

Claimant

FOR THE EMPLOYER:

Victoria Lijewski

FINDINGS OF FACT

The form DET/UIA 941 in the file indicates that the appeal filed by the Network Recruiters, Inc. was not timely. According to the 941, the appeal was to have been filed on May 19, 1992, but was not filed until May 29, 1992. In the file, there is a letter from the Network Recruiters or Snelling Temporary Services dated May 15, 1992 and seeking an appeal of the lower decision. That

was received on May 19, 1992 or May 18, 1992 by the Department of Economic and Employment Development, Towson, Maryland. Therefore, the appeal is considered as timely filed as the correct filing date is May 19, 1992.

The claimant had been working off and on since October of 1990 for the Network Recruiters, Inc. also known as Snelling Temporary Agencies. During that period of time, his normal rate of pay has been anywhere from \$8 to \$9 an hour and he accepted most assignments no matter what the length of the assignment was. In 1992, the claimant informed this employer that he would only accept work from him if it was \$9.50 an hour and was a long-term assignment. The employer considered a long-term assignment as three or more months, while the claimant considered a long-term assignment of one week or longer. Additionally, in 1992, the claimant contacted several other temporary agencies to also secure employment with them and received offers and worked from these other temporary agencies. On April 13, 1992, the claimant refused an offer of suitable work from the Snelling Temporary Agencies at \$8.50 for at least three or more days. Instead, he accepted another agency's employment; however, that employment has now ended.

CONCLUSIONS OF LAW

Section 8-1005 of the Maryland Unemployment Insurance Law discusses failure to apply for or accept suitable work. There are several requirements involved in the acceptance of work and what is suitable. In the current case, the claimant was offered work that was within his range of pay or had recently been within his range of pay, it was in his normal line of work, and it was suitable for him. The claimant's refusal of this work was basically a refusal of suitable work. Generally speaking, when a claimant works with a temporary agency, the agency will normally inform the unemployment office of the refusal to accept work and a penalty is generally imposed. Additionally, if the claimant is actively interviewing for permanent work and has reasonable prospects of an offer, the claimant then has good cause to refuse the temporary assignment. As stated above, in this case, the claimant was strictly doing temporary work at this time and was not seeking permanent employment unless he got it through one of his temporary assignments.

It is concluded from the evidence presented at the appeal hearing that the claimant failed to apply for/accept suitable work when offered to him within the meaning of the MD Code, Labor and Employment Article, Title 8, Section 1005(a)(b)(c).

As provided by Section 1005, among the factors to be considered in determining whether work is suitable for an individual are (1) the degree of risk involved to his health, safety and morals (2) his physical fitness and prior training, (3) his experience and prior earnings, (4) his length of unemployment and prospects for securing local work in his customary occupation, and (5) the distance of the available work from his residence.

In Barley v. Md. Dept. of Emp. Sec. (242 Md. 102), the Court of Appeals held that the determination of suitable work is a matter within the expertise of the administrative agency, "and it would be a rare case indeed which would justify a court in disturbing that administrative determination."

DECISION

It is held that the employer, Network Recruiters, Inc., did file a timely appeal in this matter and, therefore, there appeal is considered timely.

It is held that the claimant failed, without good cause, to accept available, suitable work within the meaning of the MD Code, Labor and Employment Article, Title 8, Section 1005. He is disqualified from receiving benefits from the week beginning April 12, 1992 until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,590) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Thomas J. Lee
1-tearing Examiner

Date of Hearing: 6/18/92
lc/Specialist ID: 09663

Copies Mailed on 6/22/92 to:
Claimant
Employer
Unemployment Insurance - Towson (MABS)