



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

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

- DECISION -

Decision No.: **1571-BR-93**

Date: **Sept. 23, 1993**

Claimant: **Sheryl G. Blue**

Appeal No.: **9313000**

S.S. No.:

Employer:

L. O. No.: **43**

Appellant: **CLAIMANT**

Issue: **Whether the claimant was able, available and actively seeking work, within the meaning of §8-903 of the Labor and Employment Article.**

- 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 appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires **October 22, 1993**

- 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 question in this case is whether the claimant was able to work. The claimant had broken her small toe on May 28th, but it did not affect her ability to stand or to perform the type of work she normally performed. It did not stop her from actively seeking work, or from applying in person for unemployment benefits.

While the claimant was applying for unemployment benefits, a claim taker noticed that the claimant was wearing a surgical shoe. The claimant was then told that she must bring in a note from a doctor stating that she was able to work. The claimant protested that she was able to work, but she was told that she had to bring in the note.

The claimant did not bring in a note. She was disqualified, then she appealed the disqualification. At the appeals hearing, the claimant testified that she was, and had always been, able to work. She was questioned closely, however, only on the issue of why she had not brought in a doctor's note. The Hearing Examiner then disqualified the claimant because she did not bring in a doctor's note, and because he did not believe her given reasons for not having produced a note.

The Board reverses the decision of the Hearing Examiner. The Hearing Examiner's decision did not reach the issue in this case. The issue in this case is whether the claimant was able to work. The Hearing Examiner did not make a finding of fact on this issue. The Board of Appeals finds as a fact that the claimant was able to work from the beginning. She thus meets the requirements of §8-903 of the law, and the disqualification imposed will be lifted.

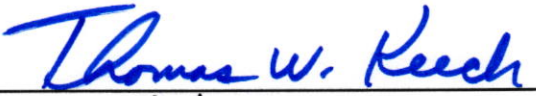
The Hearing Examiner's decision erred by stressing form over substance. The substantial issue in this case is whether the claimant was able to work. A doctor's note may be strong evidence on the issue, but the presence or absence of a doctor's note does not absolve the fact finder from making a judgment on the central issue.

In this case, the claimant's injury was so minimal that the requirement of producing a doctor's note was unreasonable. The law does not require or contemplate that apparently healthy people should be required to produce doctors' notes to verify that fact. To do so would place an onerous and unnecessary burden on those who are out of work and who need to devote their time to finding work again.


DECISION

The claimant was able to work and available for work within the meaning of §8-903 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:HW

kbm

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - WHEATON

Claimant alleges that she took the form which she was given on June 9, 1993 to her physician's office and was assured that the document would be completed and mailed by her physician's office to the Wheaton Local Office. She also alleged that she took the second form she was given to her physician's office and was given the same assurance.

CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Sections 903 and 904, provide that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restrictions upon his/her availability for work. In Robinson v. Employment Security Board, (202 Md. 515), the Court of Appeals upheld the principle that a claimant may not impose restrictions upon his/her willingness to work and still be "available" as the Statute requires.

EVALUATION OF EVIDENCE

Claimant's testimony regarding the reasons why she failed to provide the requested documentation is not credible. The issue of Claimant's ability to work was properly raised by the local office, and the Claims Examiner correctly determined Claimant to be ineligible for benefits when she failed to provide the requested documentation by the deadline she was given. Claimant is not eligible for benefits because she has failed to comply with the eligibility requirements of the Law.

DECISION

It is held that Claimant is not able to work within the meaning of Maryland Code, Title 8, Section 903. Benefits are denied for the week beginning May 23, 1993 and until such time as she meets the eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.


K. C. Sippel, ESQ.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by August 6, 1993.

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

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHERYL G. BLUE

Before the:

SSN #:

Claimant

vs.

**Maryland Department of Economic and
Employment Development
Appeals Division**

1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(401) 333-5040

Appeal Number: 9313000
Appellant: Claimant
Local Office: 43 / Wheaton

July 22, 1993

Employer/Agency

For the Claimant: PRESENT

For the Employer:

For the Agency: Vicki Clagett

ISSUE(S)

Whether the claimant is able to work, 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.

FINDINGS OF FACT

Claimant opened a claim for unemployment insurance benefits, establishing a weekly benefit amount of \$223.00 and a benefit year beginning May 23, 1993. She was invited to the Local Office for a Fact Finding Interview on June 9, 1993. At that interview, Claimant stated that she injured her foot on May 28, 1993 and was thereafter treated by a physician. Because of the statements, Claimant was asked to provide medical documentation from her physician regarding her ability to work and restrictions upon her ability to work, if any. She was given a Physician's Statement Form and was instructed to have the form completed by her physician, and to return the form to the Local Office by June 16, 1993. Because the required documentation was not received from Claimant by deadline, benefits were denied.

After her benefits stopped, Claimant reported to the local office and obtained an additional Physician's Statement Form, but that document has not been returned to the Local Office either.

Claimant alleges that she took the form which she was given on June 9, 1993 to her physician's office and was assured that the document would be completed and mailed by her physician's office to the Wheaton Local Office. She also alleged that she took the second form she was given to her physician's office and was given the same assurance.

CONCLUSIONS OF LAW

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Hearing Examiner

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

Date of hearing: July 13, 1993
cd/Specialist ID: 43750
Seq. No.: 001

Copies mailed on July 22, 1993 to:

SHERYL G. BLUE
LOCAL OFFICE #43