

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*Mark L. Wasserman, Secretary*

*Board of Appeals*  
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*Baltimore, Maryland 21201*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

**— DECISION —**

	Decision No.:	1625-BR-92	
	Date:	Sept. 22, 1992	
Claimant:	Denise McDermott	Appeal No.:	92-CWC-293
		S. S. No.:	
Employer:	Xelsen, Inc.	L. O. No.:	043
		Appellant:	CLAIMANT

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

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**— NOTICE OF RIGHT OF APPEAL TO COURT —**

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE 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 22, 1992

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**— 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 was disqualified for three weeks, the weeks ending January 4, 1992, January 11, 1992 and January 18, 1992. For the weeks ending January 4, 1992 and January 11, 1992, the claimant was temporarily ill and therefore unable to work.

She testified that as far as she knew, she was not offered any work during those two weeks. The employer was not present at the hearing and there is insufficient evidence to rebut the claimant's testimony. Therefore, the Board concludes that the claimant should have been allowed to file sick claims for those two weeks, under the provisions of Section 8-907 (a) of the Labor and Employment Article.

With regard to the last week in question, the week ending January 18, 1992, the claimant's uncontested testimony was that she did not seek work with the employer, a temporary employment agency, because she was seeking full time permanent work during that week. In the case Hannas v. Manpower, Inc., 478-BR-89, the Board discussed the ramifications of refusing an assignment from a temporary agency. Although the issue in that case was whether the claimant's refusal constituted a voluntary quit, some of the reasoning is applicable here. In that case, the Board stated that:

the claimant was required to seek permanent employment as a condition of eligibility and was under no contractual obligation, express or implied, to reapply for short duration work . . . A claimant who accepts temporary work on an interim basis is not forever after bound to accept temporary assignments, on pain of losing her unemployment insurance benefits.

See also, Gallagher v. Goodfriend Temporaries (1774-BR-82) where a refusal of a temporary assignment in order to interview for a permanent job was considered a job refusal for good cause.

This case, of course, does not deal with the refusal of a job but with a decision not to contact a temporary agency for work during a specific week. Nevertheless, the Board concludes that the reasoning in Hannas is applicable here. Therefore, the Board concludes that the claimant, even though she did not contact this temporary agency for work during that week, was able and available for work for the week ending January 18, 1992. The Board notes again that the employer was not present to provide any testimony.

#### DECISION

The claimant was eligible to file sick claims for the weeks ending January 4, 1992 and January 11, 1992, within the meaning of §8-903 and §8-907 of the Labor and Employment Article. The claimant was able to work, available for work and actively seeking work, for the week ending January 18, 1992, within the meaning of §8-903 of the Labor and Employment Article.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Chairman

W:K  
ubm  
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CLAIMANT  
EMPLOYER  
UNEMPLOYMENT INSURANCE - WHEATON



# Maryland

## Department of Economic & Employment Development

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### — DECISION —

Date:	Mailed: 6/12/92
Claimant: Denise McDermott	Appeal No.: 92-CWC-293
	U. S. No.
Employer: Xelsen, Inc.	LO. No.: 43
	Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of MD Code, Title 8, Section 903.

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### — NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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.

6/29/92

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

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### — APPEARANCES —

FOR THE CLAIMANT  
Claimant-Present

FOR THE EMPLOYER:  
Not Represented

### FINDINGS OF FACT

The claimant filed a claim for benefits establishing a benefit year effective September 22, 1991 and a weekly benefit amount of \$214. The local office determined that the claimant was not able, available and working all hours available to her from her employer, Xelsen, Inc.

The credible evidence indicates that the local office received a form back from the part-time employer denoting the fact that the claimant failed to work all available hours for the week of December 29, through January 4, January 5, through January 11, 1992, and January 12, through January 18, 1992. The claimant was sick and had a medical note for the weeks beginning December 30, through January 11, 1992.

Since the claimant had been ill for the two prior weeks, the claimant called and notified the employer that she would not be available for temporary work since she needed to do some interviewing and work for a job with a permanent position.

For the particular three weeks in question, the claimant notified the employer that she was unable to work for these particular three weeks.

The employer was not present at the hearing to present any evidence.

#### CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Section 903 and 904 provides 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.


In the instant case, the claimant was not available to work all hours available to her. The employer did not give the specific hours that the claimant was offered for these weeks in question and because the claimant notified the employer that she could not work. For the weeks of December 29, 1991 to January 11, 1992, the claimant was disabled as a result of influenza. The claimant did provide proper medical evidence. During the week ending January 18, 1992, the claimant was conducting an extensive job search and interview according to the employer. The claimant is not able and available and actively seeking work for the weeks in question when she refused to work any and all hours available to her part-time employer.

#### DECISION

The claimant was not able, available, or actively seeking full-time work, within the meaning of the Maryland Code, Labor

and Employment Article, Title 8, Section 903. Benefits are denied for the week beginning December 29, 1991 and through January 18, 1992.

The determination of the Claims Examiner is affirmed.

  
Kevin M. O'Neill  
Hearing Examiner

Date of hearing: 6/8/92  
rc/Specialist ID: 43734  
Copies mailed on 6/12/92 to:

Claimant  
Unemployment Insurance - Wheaton - MABS