

- DECISION -

Claimant:

FARRUKH U. RAHMAN

Decision No.: 01721 -BR-95

Date: May 26, 1995

Appeal No. : 9501736

S.S. No.:

Employer:

STATE HIGHWAY ADM 291005001

L.O. No.: 07

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 Court 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: June 25, 1995

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

The claimant took a two year leave of absence from state service to attend to family matters in his native Pakistan. The claimant did not know if he would need the full two years at that time, but since the state offered it, he took it as a precaution, effective March 4, 1994.

As it turned out, he returned to Maryland on December 30, 1994 and contacted his employer. No job was immediately available to him but he was placed on the reinstatement list. As of the first week in January, 1995, the claimant sought full time work, both with the state and with other employers.


The Board concludes that this case is an exception to the general rule that a claimant is not meeting the requirements of LE, §8-903 during the entire period of a voluntary leave of absence. While the claimant certainly wasn't available for work while he was in Pakistan, when he returned to Maryland, placed himself on the reinstatement list and actively sought work, he was meeting the requirements of the law. To find him ineligible for benefits for the next twelve months, under these circumstances, flies in the face of the intent and meaning of the unemployment insurance law.

Therefore, the decision of the Hearing Examiner is reversed.

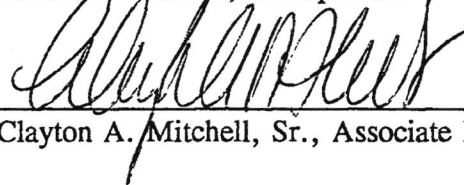
DECISION

The claimant is able to work, available for work and actively seeking work within the meaning of §8-903 of the Labor and Employment Article. Benefits are allowed from week beginning January 8, 1995.

The decision of the Hearing Examiner is reversed.



Hazel A. Warnick, Chairperson



Clayton A. Mitchell, Sr., Associate Member

kjk

Copies mailed to:

FARRUKH U. RAHMAN

STATE HIGHWAY ADM 291005001

STATE HIGHWAY ADM 291005001

Local office - #07

UNEMPLOYMENT INSURANCE APPEALS DECISION

FARRUKH U. RAHMAN

Before the:

SSN #

Claimant

vs.

STATE HIGHWAY ADM 291005001

Employer/Agency

**Maryland Department of Economic and
Employment Development**

Appeals Division

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 9501736

Appellant: Claimant

Local Office: 07 / College Park

February 27, 1995

For the Claimant: PRESENT

For the Employer:

For the Agency:

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

The claimant requested a two year leave of absence effective March 4, 1994, for the purpose of returning to Pakistan to handle family business. The claimant returned from Pakistan on December 30, 1994 and inquired about the returning to work. The claimant's previous job was not available when he returned. The leave of absence expires on March 1, 1996.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994) provides that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restriction upon availability for 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.

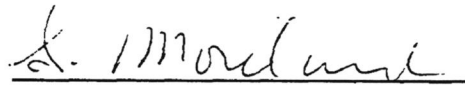
The claimant who voluntarily removes himself from the work force for a substantial period of time, pursuant to a leave of absence granted at his request, is not "available for work" within the meaning of Section 4(c), (now 8-903), of the Law, prior to the expiration of the leave, where the employer has filled the claimant's position in reliance on the leave. Muller v. Board of Education, 144-BH-83. See also, Mahon v. Industrial Union of Marine and Shipbuilders Workers of America, 100-BR-84, and Manacher v. Maryland Office on Aging, 782-BR-84.

In this case, the claimant returned to work prior to the expiration of his leave of absence and no work was available to him. Since the claimant initiated the leave of absence and returned prior to the expiration of the leave, he remains "unavailable for work" within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 903.

DECISION

IT IS HELD THAT the claimant is not fully able and available for work without material restriction and/or not actively seeking work within the meaning of Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994). Benefits are denied for the week beginning January 8, 1995, and until such time as the claimant is fully able, available and actively seeking work without material restriction.

The determination of the claims examiner is affirmed.



S. Moreland, ESQ
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Economic Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by March 14, 1995

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

Date of hearing: February 15, 1995

RC/Specialist ID: 07227

Seq. No. :002

Copies mailed on February 27, 1995 to:

FARRUKH U. RAHMAN
STATE HIGHWAY ADM 291005001