

- DECISION -

Claimant:
DARLENE M SAVOY

Decision No.: 1750-BR-13

Date: April 29, 2013

Appeal No.: 1235599

S.S. No.:

Employer:
MV CONTRACT TRANSPORTATION

L.O. No.: 64

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: May 29, 2013

REVIEW OF THE RECORD

After a review of the record, and after deleting the second and third paragraphs, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of facts:

The claimant had a severe panic and anxiety attack on September 7, 2012. She sought help from a medical professional and was restricted from performing work as a driver. No other restrictions were placed upon the claimant's ability to perform other kinds of work.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training*, 309 Md. 28 (1987).

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or evidence that the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that he is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., § 8-903*. A claimant may not impose conditions and limitations on his willingness to work and still be available as the statute requires. *Robinson v. Md. Empl. Sec. Bd*, 202 Md. 515, 519 (1953). A denial of unemployment insurance benefits is warranted if the evidence supports a finding that the claimant was unavailable for work. *Md. Empl. Sec. Bd. v. Poorbaugh*, 195 Md. 197, 198 (1950); compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1, 21 (2002).

A claimant should actively seek work in those fields in which he is most likely to obtain employment. *Goldman v. Allen's Auto Supply*, 1123-BR-82; also see and compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1 (2002).

The term "available for work" as used in § 8-903 means, among other things, a general willingness to work demonstrated by an active and reasonable search to obtain work. *Plaughter v. Preston Trucking*, 279-BH-84. A claimant need not make herself available to a specific employer, particularly when the employer cannot guarantee her work, in order to be available as the statute requires. *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1, 22 (2002).

Section 8-903 provides that a claimant must be able to work, available to work, and actively seeking work in each week for which benefits are claimed.

In her appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant does not cite to the evidence of record and makes no other contentions of error. She merely states her disagreement with the hearing examiner's decision.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The

Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient relevant evidence exists for the Board to make its decision.

The Board has thoroughly reviewed the record from the hearing. The Board finds that the hearing examiner exceeded the subject matter jurisdiction conferred by the benefit determination and Notice of Hearing. The Board limits its review of this matter to the evidence relevant to the factual issue or issues before the hearing examiner.

In *Shaw v. Valdez*, 819 F.2d 965 (10th Cir. 1987), the U. S. Supreme Court held: “[i]t goes without saying that the requirements of a fair hearing include notice of the claims of the opposing party and an opportunity to meet them.” *FTC v. National Lead Co.*, 352 U.S. 419, 427, (1957); see also *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

The Court has additionally stated: “We think Shaw was entitled, as a matter of right, to know in advance all of the factual and legal issues that would be presented at the hearing.” The *Shaw* Court further held:

Lastly, we are not persuaded by the consideration that the volume of appeals in such cases required expeditious proceedings, without a more specific notice. The State could afford a fair hearing premised on fair notice by a brief statement of particular factual and legal points to be raised at the hearing... with a warning to the parties that there would be no "issue switching" at the hearing.

And we note further that while the burden on the administrative process of a particular procedural safeguard should be considered, *Mathews v. Eldridge*, 424 U.S. 319, 335, (1976) administrative "speed and efficiency" cannot justify a failure to observe basic fairness in procedure. See *Stanley v. Illinois*, 405 U.S. 645, 656, (1972).

In an unemployment insurance benefit hearing, both parties are entitled to notice of the factual and legal issues to be adjudicated at the hearing. This requires more than a broad unspecified statement or a statement that is so vague and potentially inclusive as to be meaningless. Additionally, the issue stated on the Notice of Hearing should be materially consistent with the issue shown on the benefit determination from which a party has appealed.

Whatever administrative burden is placed on the Agency to provide actual notice of both the legal and factual issues to be considered in a hearing is outweighed by the private interests of the party against whom this burden lies. It is patently unfair to require or expect a party to be prepared for any and all factual issues which may arise from a generalized legal issue stated in a Notice of Hearing. This is not to require the Agency to list each and every allegation contained within the various documents which precede an appeal hearing. But, the Agency is expected to provide a level of specificity such that a reasonable person has a fair opportunity to prepare to advance their cause or defend their position. The Board is of the opinion that the Notices of Hearing in this case, and in similar cases, are sufficient as to the legal issues; the Notices of Hearing are insufficient with respect to the factual issues to be adjudicated.

In this matter, the factual issue concerned only the claimant's ability to work; whether she was restricted from working by her physician. The evidence established that the claimant was restricted for working as a driver because of panic or anxiety. The claimant had no other restrictions and was fully able to work in a variety of occupations including retail sales, in which she was seeking work.

The Board disregards the hearing examiner's inquiries into the claimant's availability for work and her work search. Both of those factual issues are beyond the scope of the factual issues for which the claimant was given notice.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant has met her burden of demonstrating that she was able to work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The claimant is entitled to benefits if she is otherwise qualified and eligible. The decision shall be reversed for the reasons stated herein.

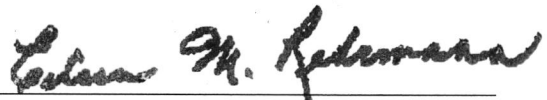
DECISION

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 September 9, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

KJK/mw

Copies mailed to:

DARLENE M. SAVOY
MV CONTRACT TRANSPORTATION
SUSAN BASS DLLR
MV CONTRACT TRANSPORTATION
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DARLENE M SAVOY

SSN #

Claimant

vs.

MV CONTRACT TRANSPORTATION
INC

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: 1235599
Appellant: Claimant
Local Office : 64 / BALTOMETRO
CALL CENTER

November 19, 2012

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

The claimant, Darlene Savoy, filed for unemployment insurance benefits establishing a benefit year effective April 3, 2011 with a weekly benefit amount of \$326.00.

Since opening her claim for benefits, the claimant has primarily been seeking full-time retail work, for which the customary hours of employment are 8:00 a.m. to midnight, seven days per week. The claimant is available for work from 7:00 a.m. to midnight. Although the claimant suffered a severe panic and anxiety attack on September 7, 2012 and was placed under a doctor's care, the claimant was only restricted from performing work as a driver. The claimant is fully able to perform retail work.

The claimant has made an unknown number of job contacts since September 9, 2012 and made just one job contact during the week of October 21, 2012.

CONCLUSIONS OF LAW

Md. Code Ann., Labor of 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

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner. The claimant had the burden to show, by a preponderance of the evidence, that she is in compliance with Agency requirements. In the case at bar, that burden has not been met.

Although the credible testimony and evidence establishes that the claimant has been able and available to work since opening her claim for benefits, the claimant failed to prove that she has actively sought work at any time since opening her claim for benefits. During the appeals hearing, the claimant testified that she has not kept any record of her job contacts and she was unable to provide any specific information as to the job contacts she has made since September 9, 2012. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that she seeks benefits. It is not permissible to cease the active search at any time while still in claim status. In the instant case, as the claimant has failed to prove that she has made an active search for work, she will be disqualified from receiving 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 September 9, 2012 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

J. Nappier

J. Nappier, 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 410-767-2404. 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.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

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 December 5, 2012. 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
Phone 410-767-2781

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

Date of hearing: November 02, 2012
DAH/Specialist ID: RBA3A
Seq No: 005
Copies mailed on November 19, 2012 to:
DARLENE M. SAVOY
MV CONTRACT TRANSPORTATION
LOCAL OFFICE #64

SUSAN BASS DLLR