



- DECISION -

Claimant:
KENNETH WALKER

Decision No.: 176-BR-15
Date: January 28, 2015

Appeal No.: 1421467

Employer:

S.S. No.:
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: February 27, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on October 8, 2014. That Decision held the claimant was not able to work, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning March 9, 2014 through the week ending September 27, 2014.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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

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fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to present documentary evidence and to make a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument. Sufficient evidence exists in the record from which the Board may make its decision.

The Board, after deleting the fourth paragraph, finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts, however, are insufficient to support the hearing examiner's Decision. The Board makes the following additional findings of fact:

The claimant was seeing other medical care providers for unrelated matters. None of those matters impaired the claimant's ability to seek or accept work within the areas of his training, education and experience.

The Board adopts the hearing examiner's modified findings of fact but concludes that those facts warrant different conclusions of law and reversal of the hearing examiner's decision.

Md. Code Ann., Lab. & Empl. Art., §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.

The claimant has the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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)*.

Being able to work is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. The concept of being able to work requires an individual to be

physically and mentally capable of performing the type of work being sought. Persons with injuries, illness or disabilities may still be able to work if they seek appropriate work consistent with their training, education and experience. In *Connor v. City of Baltimore*, 416-BR-87, the Board held: "A claimant who is restricted from performing certain work is not disqualified under Section 8-903 if he shows that he is able to do other work and is, in fact, seeking other work that he is capable of performing during the time has the restriction." The Board has also held, in *Swafford v. U. S. Postal Service*, 252-BH-89: "When severe limitations are placed upon a claimant's ability to work, the claimant has the burden of showing not only that she was seeking work, but seeking work that she could do, given her limitations."

In his appeal, the claimant contends his other medical issues were not a bar to his employment. He reiterates his contention from the hearing that he was released to return to his regular type of work, without restrictions, in April 2014 and, from that point forward, was able to work, available for work, and actively seeking employment.

The evidence from the hearing establishes that the claimant was able to work, after being released by his doctor in April 2014. The claimant may have been seeing other medical professionals for a variety of reasons, but there was no evidence that he was not able to work as a consequence. Because the claimant's physician did not specify a date in April, the Board will use the end of April and the date upon which his restrictions ended.

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.

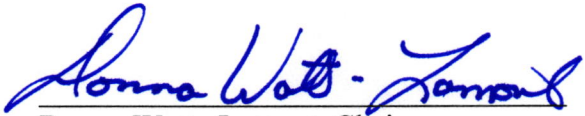
The Board finds based upon a preponderance of the credible evidence that the claimant did meet his burden of demonstrating that he was able, available, and actively seeking work, from the week beginning May 4, 2014 within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be modified for the reasons stated herein.

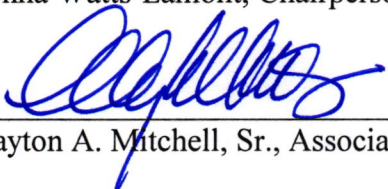
DECISION

The Board holds that the claimant was not able to work, available for work, and actively seeking work, from the week beginning March 9, 2014 through the week ending May 3, 2014, within the meaning of *Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903*. The claimant is not eligible to receive benefits for those weeks.

The Board further holds that the claimant was 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*. The claimant is eligible to receive benefits from the week beginning May 4, 2014, so long as the claimant is meeting the other requirements of the law.

The Hearing Examiner's decision is Modified.


Donna Watts-Lamont, Chairperson


Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

KENNETH WALKER

SUSAN BASS DLLR

CYNTHIA SPIRT AAG DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KENNETH WALKER

SSN #

Claimant

vs.

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: 1421467
Appellant: Claimant
Local Office : 64 / BALTOMETRO
CALL CENTER

October 08, 2014

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, Kenneth Walker, filed for unemployment insurance benefits establishing a benefit year effective March 9, 2014, with a weekly benefit amount of \$ 283.00.

The clamant requested to be paid unemployment insurance benefits during a time when he was not able and available for work due to illness and contrary to Maryland Unemployment Insurance Law

On March 6, 2014, the claimant was hospitalized for a foot wound. He was under doctor's care for his wound through April 2014. But, the claimant remained under doctor's care for other impairments pertaining to his lungs and blood pressure.

Due to these other impairments, the claimant was seeing other doctor's. He was seeking work against his doctor's order. But, on or about September 26, 2014, the claimant's primary treating physician opined in a medical statement that the claimant has no impairments preventing him from working.

The claimant last worked as a dish washer. In addition, he has a long history of working as a house keeper and seeking work in each field.

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 he is in compliance with Agency requirements. In the case at bar, that burden has been met.

As the Board of Appeals noted in Dean v. Highs of Baltimore, Inc., 429-BR-89, "A disqualification under Section 8-903 ends when the claimant is released by the doctor to return to work."

In the case at bar, the claimant foot impairment improved and allowed him to seek work in April 2014. The medical statement provided by the claimant's treating physician does not address the claimant other impairments. But, the claimant's statement at the hearing that he was seeking work against his doctor's order cannot be ignored. He was under the care of other doctor's for other impairments.

At the hearing the claimant appeared to have no impairments impacting his ability to perform daily activities. In fact, he walked from his residence to the hearing venue.

In addition, the claimant presented his job contacts, making the necessary contacts.

For the above reasons, as of September 28, 2014, the claimant was not under a material restriction and benefits are allowed.

DECISION

IT IS HELD THAT the claimant was not fully able, available and actively seeking works within the meaning of Md. Code Ann., Labor & Emp. Article, and Section 8-903. Benefits are denied from March 9, 2014 through September 27, 2014. Benefits are allowed commencing September 28, 2014, and thereafter, provided the claimant meets all requirements of the Law. The claimant may contact Claimant Information

Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at (410) 767-2727, or outside the Baltimore area at 1-800-827-4400. The determination of the Claims Specialist is modified.

The determination of the Claims Specialist is modified.



C E Edmonds, 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 of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal 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 October 23, 2014. 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: September 24, 2014

DAH/Specialist ID: RBA3M

Seq No: 002

Copies mailed on October 08, 2014 to:

KENNETH WALKER

LOCAL OFFICE #64

SUSAN BASS DLLR