

- DECISION -

Claimant:	Decision No.:	1831-BR-14
KATHY R ALTER	Date:	July 25, 2014
	Appeal No.:	1405828
	S.S. No.:	
Employer:	L.O. No.:	63
,	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: August 24, 2014

REVIEW OF THE RECORD

After a review of the record, the Board rejects the hearing examiner's findings of fact and conclusions of law. The Board makes the following findings of fact:

The claimant provides care for her elderly mother. The claimant had done this while fully employed in the past and would continue to do so. A neighbor assists the claimant occasionally, and the claimant can make other arrangements if necessary.

The claimant would prefer to work a mid-day shift, evening shift, or night shift as these shifts allow her greater flexibility in caring for her mother. The claimant is willing to

accept work on any shift and has applied for positions on all shifts. When the claimant obtains full-time employment, she will make whatever arrangements she needs to see that her mother has care so she can work.

The claimant is in the nursing field and positions are available at all hours of all days of the week. The claimant has not limited her job search because of her familial obligations.

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. *Plaugher 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 the claimant's appeal and memorandum in support thereof, the claimant's attorney contends the hearing examiner erred in his recitation of facts and misstated the claimant's testimony from the hearing. Claimant's counsel notes that the claimant did not use the equivocating language attributed to her by the hearing examiner. Because the Board generally agrees with the contentions raised, the Board will not specifically address all of them below.

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 necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner's decision. The claimant did not testify to any material restriction on her availability to work. The claimant merely expressed a preference for certain hours, but testified that she could, and would, work any shift for which she had an offer of employment. A preference is not a limiting factor. In point of fact, the Board has never held that any claimant must be available for work all hours of all days of each week. The Board find the claimant is not unduly restricting her availability for work.

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, available, and actively seeking work, effective January 26, 2014, and forward, within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. 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. The claimant is entitled to benefits, as of the week beginning January 26, 2014, if the claimant is qualified and otherwise eligible.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

KATHY R. ALTER

SUSAN BASS DLLR

IAN R. MCLLROY ESQ.

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KATHY R ALTER

SSN #

vs.

Claimant

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: 1405828

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

March 26, 2014

For the Claimant: PRESENT, IAN MCLLROY, ESQ.

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 filed for unemployment benefits during the week beginning January 26, 2014 with a weekly benefit amount of \$222.00. Since filing for benefits the claimant has made at least two job contacts each week and is actively seeking work in the nursing field. The claimant, Kathy Alter, has a restriction on her availability due to caring for her elderly mother.

The claimant prefers to work overnight shifts from 11:00 pm to 7:00 am but is also available to work 3:00 pm to 11:00 pm if offered. The claimant does not want to work in the morning because she takes care of her mother during this time although she may be able to make arrangements if possible. The claimant is an

only child and it appears the bulk of her mother's care falls on her although she may have assistance from a neighbor with her mother when the claimant sleeps during the day. This was the arrangement that the claimant had in place with her most recent employer with Brook Grove nursing home.

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 claimant had the burden to show, by a preponderance of the credible evidence, that he is able, available and actively seeking work within the meaning of the Maryland Unemployment Insurance Law. In the case at bar, that burden has not been met. Although the claimant testified that she prefers late afternoon or overnight shift work, she did not sufficiently explain who would care for her mother if she was offered early morning shift work. On this issue the claimant was ambiguous and there exists a very clear conflict on her availability for work if it were offered. Clearly the claimant wants to work overnight but she has not testified sufficiently to support a finding that she is totally available for work on all hours or shift due to her care of her mother.

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 January 26, 2014 and until the claimant is fully able, available and actively seeking work without material restriction. 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 Examiner is affirmed.



P G Randazzo, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 April 10, 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 : March 24,2014
TH/Specialist ID: WCU3P
Seq No: 001
Copies mailed on March 26, 2014 to:

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