

- DECISION -

Claimant:
DOUGLAS P MROCKOWSKI

Decision No.: 185-BR-11

Date: January 14, 2011

Appeal No.: 0943487

S.S. No.:

Employer:
PAPA JOHN'S USA INC

L.O. No.: 60

Appellant: CLAIMANT - REMAND FROM
COURT

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 14, 2011

REVIEW ON THE RECORD

Pursuant to the Order of the Circuit Court for Harford County, and after a review on the record, the Board adopts the hearing examiner's findings of fact, finds the following additional findings of fact and reverses the hearing examiner's decision.

The claimant was under no medical restriction for seeking or accepting work in his customary profession. Except for pizza-delivery, the claimant was able and available for suitable work.

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 09.32.06.02(E)*.

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.

The Board does not concur with the hearing examiner's legal analysis. In the instant case, the claimant obtained a part-time job outside his usual profession or occupation. Although the claimant's physician directed the claimant not to perform the duties of a part-time delivery driver, there is insufficient evidence that the claimant was prohibited from seeking or accepting other suitable work within the scope of his usual profession or occupation. The Board finds on the narrow facts of this case, the claimant is able and available for suitable 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 met his burden of demonstrating that he was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The hearing examiner's 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 November 1, 2009, provided the claimant meets the other requirements of the law.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

DOUGLAS P. MROCKOWSKI

PAPA JOHN'S USA INC

SUSAN BASS DLLR

PAPA JOHN'S

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DOUGLAS P MROCKOWSKI

SSN #

Claimant

vs.

PAPA JOHN'S USA 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: 0943487

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

February 09, 2010

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 filed for unemployment insurance benefits establishing a benefit year effective November 1, 2009 with a weekly benefit amount of \$410.00.

Prior to opening his claim for unemployment insurance benefits, the claimant was in an automobile accident from which he sustained injuries. The claimant's primary full-time occupation is business manager. The claimant was not employed in that occupation at the time he filed for unemployment insurance benefits. Rather, the claimant's only position at that time was a part-time delivery driver. As a result of the claimant's injuries, he was advised by his physician to cease working as a pizza delivery driver for the period of November 1, 2009 through November 23, 2009.

The claimant was on an unpaid leave of absence and the employer was holding a position until the claimant returned.

During this three week period of time, the claimant was able to work in his primary customary occupation and was actively seeking work in that 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 not been met.

The claimant testified that although he remained medically able to perform his customary occupation as a business manager, he was not medically able to perform his occupation as a pizza delivery driver. The claimant also testified that he was only employed as a pizza delivery driver at the time he filed his claim. The claimant further testified that he was on a leave of absence from this employer and his job was open until he returned.

The Board of Appeals has held that "where a claimant removes himself from a job pursuant to a voluntary leave of absence..., the claimant is not available for work under Section 8-903 until the expiration of the leave. See Smith v. APG, Inc., 675-BR-88.

Accordingly, a disqualification is warranted and benefits will not be allowed for those weeks in which the claimant demonstrated a material restriction upon availability for work as discussed above.

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 November 1, 2009, through November 21, 2009.

The determination of the Claims Specialist is affirmed.

Sakeenah Smith

Sakeenah Smith
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 February 24, 2010. 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 : January 25, 2010

BLP/Specialist ID: WCU4C

Seq No: 004

Copies mailed on February 09, 2010 to:

DOUGLAS P. MROCKOWSKI
PAPA JOHN'S USA INC
LOCAL OFFICE #60
SUSAN BASS DLLR