

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	1861-BR-92
	Date:	October 20, 1992
Claimant:	Appeal No.:	9211016
	S. S. No.:	
Employer:	L. O. No.:	023
	Appellant:	CLAIMANT

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of §8-903 of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES November 19, 1992

— APPEARANCES —

FOR THE CLAIMANT: FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the findings of fact and conclusions of law of the Hearing Examiner.

The claimant was disqualified for not being fully available for work, but the Board concludes that several errors were made in the Hearing Examiner's consideration of the case. The Hearing Examiner's statement that §8-903 of the Labor and Employment Article requires that "a claimant must be willing to work any and all shifts" is inaccurate. The statute does not, of course, say this in so many words, nor is this standard reasonable in all circumstances. The relevant question is whether the claimant is reasonably available for work to the extent that a person actually desiring to work and making it of the highest priority in his or her life would do so. The Robinson case cited by the Hearing Examiner involved a restriction on availability much more extensive than that at issue in this case, and that case is of little help in deciding this one.

The claimant's very first recorded statement in regard to her availability was that she preferred to work on the day shift but that she also would accept an evening job. (See, DEED/OUI 221 dated 5-4-92). The claimant's interview form, dated the following day, states that the claimant was available for "only day work." (See, DET/VIA SR-14-C and DEED/OUI SR-14-B, dated 5-5-92).

The claimant's testimony was that she strongly preferred day work, but that she would consider evening work if the pay were high enough. The claimant stated that she would not accept evening work at \$6.00 per hour, but it should be noted that the claimant's last permanent job was for \$9.60 an hour, and that she was currently employed at a temporary day shift job at \$10.00 an hour. The Board credits the claimant's testimony that she was not totally ruling out evening work.

Even more important, however is the issue of whether the claimant needed to be available for evening work in order to be adequately available for work. No one from the agency attended the hearing, and there is no other evidence in the file on the number of evening jobs in the claimant's occupation, much less the percentage of these jobs on the various shifts. The claimant testified that she believed that these types of jobs were primarily available on the day shift, and there is no evidence in the record to contradict her statement.

Since there is no evidence that the claimant's restriction concerning evening work was absolute, nor that there was a substantial percentage of jobs in her classification performed in the evening anyway, a disqualification based upon the evening work issue is inappropriate.

The claimant's testimony regarding the area in which she was looking for work was somewhat more damaging to her case; but,

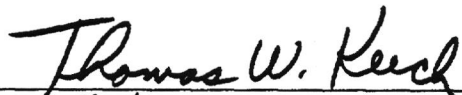
once again, in the absence of any evidence to the contrary from the agency, it is insufficient to disqualify her from benefits. The claimant lives in Laurel, Maryland and was, at the time of the hearing, working at a temporary job 17 3/4 miles from her home. She was actively looking for work as far as 20 miles from her home, in Columbia, Maryland. She stated that she might accept a job as far as Bethesda, Maryland, depending on the pay offered. She would not work in downtown Baltimore and expressed reservations about working in downtown Washington, D.C.

The claimant is seeking types of work, clerical and data entry, which are not extremely specialized. Most employers of all types, sizes and locations utilize this type of employee. Other than these obvious facts, there is no labor market information in the record, and it would be going too far to state flatly, based on this sparse record, that the claimant's search for work was too geographically limited. Based on this record, the Board concludes that the claimant was available for work within the meaning of §8-903 of the law.

DECISION

The claimant was able to work, available for work and actively seeking work within the meaning of §8-903 of the Labor and Employment Article. No disqualification is imposed based upon the claimant's preferred work shift or the geographical area of her work search.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:H

myh

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLUMBIA



Maryland

Department of Economic & Employment Development

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Room 511

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Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Date:	Mailed:	06/19/92
Claimant: Kathleen V. Harwell	Appeal No.:	9211016
	S. S. No.:	
Employer:	L. O. No.:	023
	Appellant:	CLAIMANT

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of the Code of MD, Labor and Employment Article, Title 8, Section 903.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

July 6, 1992

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Kathleen V. Harwell - Present

FINDINGS OF FACT

The claimant filed a claim for benefits establishing a benefit year, effective March 15, 1992, and a weekly benefit amount of \$223.00. The local office denied the claimant benefits from the week beginning May 3, 1992, until meeting the requirements of the

Law because of a determination that the claimant was restricting her availability for work to certain hours, days and distance from work.

The credible evidence indicates that the claimant is restricting her availability to work for day shift only. The claimant showed in this hearing to not be willing to work a 3:00 p.m. to 11:00 p.m. shift for \$5.00 or \$6.00 per hour. The claimant is looking for positions in the data entry or clerical field.

The claimant also would be unwilling to travel fifteen to twenty miles to work. The claimant would be unwilling to accept a position in Baltimore. It is noted for the record that the claimant resides in Laurel, Maryland. The evidence indicates that the claimant has a phobia of driving. However, a medical statement concerning the claimant's disability was not provided. The claimant, according to her own testimony has never seen a doctor concerning the proposed disability.

The claimant has obtained a temporary position as of June 2, 1992.

CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Section 903 and 904 provides that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restrictions upon his/her availability for work. In Robinson v. Employment Security Board (202 Md. 515), the Court of Appeals upheld the principle that a claimant may not impose restrictions upon his/her willingness to work and still be "available" as the Statute requires.

In the instant case, the claimant is not able, available and actively seeking work without restriction. The claimant is restricting the distance that she is willing to work from her home and restricting the days and shifts that she is willing to work. The Law in the State of Maryland with regard to unemployment insurance benefits states that a claimant must be willing to work any and all shifts in order to be meeting the requirements of the Annotated Code of Maryland, Labor and Employment Article, Title 8, Section 903. The claimant is not meeting these requirements.

DECISION

The claimant is not able and available, available and actively seeking work without restriction within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 903. Benefits are will be denied for the week beginning May 3, 1992,

until meeting the requirements of the Law.

The determination of the Claims Examiner is affirmed.

Kevin M. O'Neill - KE
Kevin M. O'Neill
Hearing Examiner

Date of Hearing: 06/19/92
ke/Specialist ID: 23381
(Cassette Attached to File)

Copies mailed on 06/19/92 to:

Claimant
Unemployment Insurance - Columbia (MABS)

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