

DECISION

Claimant:
MORRILOU MORELL

Decision No.: 1909-SE-00

Date: October 30, 2000

Appeal No.: 0007895

Employer:

S.S. No.:

L.O. No.: 61

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: November 29, 2000

- APPEARANCES -

FOR THE CLAIMANT:
Claimant

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

FINDINGS OF FACT

The claims examiner ruled that the claimant was "not able and available for full time work because of a medical problem" during the week ending April 16, 2000.

The claimant had filed for benefits establishing a benefit year commencing April 9, 2000; her weekly benefit amount was calculated to be \$250.00.

The claimant became unemployed through no fault of her own when the small law practice for which she worked closed its doors. The claimant functioned as the office manager and had worked for this firm for seventeen (17) years.

During her employment the claimant was afflicted with fibromyalgia. Fibromyalgia is a skeletal-muscular-neurological condition that is unpredictable from day to day and may affect any part of the body without warning. The claimant suffers pain, weakness and/or fatigue ranging from mild to severe. In some instances, symptoms are incapacitating. See Claimant Exhibit No. 1 - the physician's statement of Howard I. Levine, M.D. dated April 24, 2000.

During the claimant's employment accommodations were made for her due to her disability. These accommodations included placing the claimant on a flexible, part-time schedule. See *Claimant Exhibit 3* - letter of Samuel B. Groner, Esquire, dated October 6, 2000.

The claimant is willing to work and has searched for work since becoming unemployed. Her search is consistent with the accommodations made for the claimant by her former employer because of the claimant's disability.

Additionally, the claimant has been under the care of a physician for injuries sustained in an automobile accident which occurred on May 7, 2000. Since that time the claimant has been totally, temporarily unable to work. Consequently, since the automobile accident the claimant has not conducted an active search for work (*Claimant Exhibit No. 2* - Letter of Herbert H. Joseph, M.D. dated September 29, 2000)..

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-903 (Supp. 1996) 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.

Md. Code Ann., Labor & Emp. Article, Section 8-903(b) (Supp. 1996) states that the Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under Section 8-903(a)(1)(i).

Md. Code Ann., Labor & Emp. Article, Section 8-907 (Supp. 1996) provides that an individual may not be denied benefits for any week of unemployment for failure to meet the requirements of Section 8-903 (a) (1) of the subtitle to be able to work, available for work, and actively seeking work if the failure results from illness or disability that occurs after the individual has registered for work, provided that no work that would have been considered suitable at the time of the initial registration is offered to the individual after the beginning of the illness or disability.

The claimant has established by a preponderance of the evidence that she suffers from a medical disability. Her long-time prior employer accommodated the claimant by allowing an elastic, part-time schedule for her. The claimant's subsequent job search mirrors the conditions under which she is able to function successfully in the work force. The evidence is clear that the claimant has placed no restrictions upon her willingness to work. The only limitations are those precipitated by the claimant's disability. Therefore, the claimant is able and available for work within the meaning of the Robinson test and in light of the legislative mandates set forth in Section 8-903(b).

Maryland Law prohibits the using of the disability of a person with a disability as a factor in finding that such person is not able to work under the Maryland Unemployment Insurance law.

DECISION

Accordingly, the claimant is found to be able and available for work. Benefits are allowed the week beginning April 9, 2000 and thereafter.

Consequently, since the claimant commenced claim status on April 9, 2000, the claimant's inability to work due to the automobile accident of May 7, 2000 shall be treated as a "sick claim" under Section 8-907 of the law.

The decision of the Hearing Examiner is reversed.

Hazel A. Warnick, Chairperson



Clayton A. Mitchell, Sr., Associate Member

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 410-949-0022 or 1-800-827-4839. 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.

KJK

Date of hearing: September 29, 2000

Copies mailed to:

MORRILOU MORELL
LOCAL OFFICE #61

UNEMPLOYMENT INSURANCE APPEALS DECISION

MORRILOU MORELL

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: 0007895

Appellant: Claimant

Local Office : 61 / COLLEGE PARK

CLAIM CENTER

June 13,2000

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 benefits establishing a benefit year commencing April 9, 2000. She qualified for a weekly benefit amount of \$250.00.

The claimant testified that she suffered from fibromyalgia which is a muscular skeletal disorder. The claimant states that this prevents her from working on a full-time basis. She was suffering from this malady at the time she filed for her benefits. The claimant states that she cannot work full time and has not made an active search for full-time employment.

The claimant's last job was as the office manager of a small law practice. She stopped working at the end of 1999. She had only been working on a part-time basis.

While the claimant's doctors report was not in the file, the claimant states that her doctor reports that she cannot work on a full time basis.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-903 (Supp. 1996) 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's testimony was clear that she cannot work full time due to her illness that she is not interested in working full time; and has not been seeking full-time employment. Based on the claimant's credible testimony, I find that she is not able and available pursuant to Section 8-903.

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 (Supp. 1996). Benefits are denied for the week beginning April 9, 2000 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claim Specialist is affirmed.

A S Levy, 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 410-949-0022 or 1-800-827-4839. 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.

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by June 28, 2000.

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

Date of hearing : June 05,2000

CH/Specialist ID: WCP4D

Seq No: 001

Copies mailed on June 13, 2000 to:

MORRILOU MORELL

LOCAL OFFICE #61