

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

- DECISION -

Claimant:	Decision No.:	2037-BR-93
JACQUELINE A. WHITTINGTON	Date:	December 2, 1993
	Appeal No.:	9314698
	S.S. No.:	
Employer:	L.O. No.:	45
	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 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: January 1, 1994

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

The Hearing Examiner disqualified the claimant on the grounds of not being able to work and available for work based on the following two factors: (1) the doctor's note stated that the claimant was "able to work" but did not "establish" whether the pregnancy "restricts her availability to accept employment"; (2) the claimant was found not credible because she stated that she was four months pregnant on June 22nd and later stated that she was four to five months pregnant on September 2nd.

With respect to the first reason, the Board notes that a doctor's note usually reaches only the issue of ability to work. There is no reason to expect a doctor's note to establish a claimant's availability for work. With respect to the second reason, the Board notes that whether the claimant was accurate (or even truthful) about the length of time she had been pregnant is of little relevance. The medical documentation shows that she was able to work as of September 2nd.

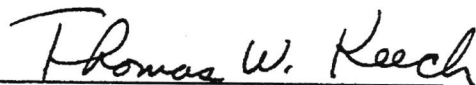
Since the Hearing Examiner found against the claimant on the issue of credibility, however, the Board will not credit the claimant's testimony that she was able to work prior to September 2nd, the date that her ability to work was established by medical evidence.

Since the claimant had child care available by July 30, 1993, this does not effect the claimant's availability for work after September 2, 1993.

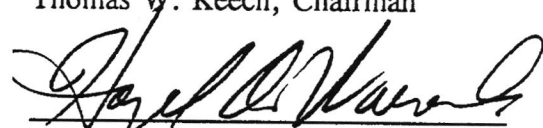
DECISION

The claimant was not able to work, within the meaning of Section 8-903 of the Labor and Employment Article, from May 30, 1993 through the week ending August 28, 1993. Beginning with the week beginning August 29, 1993, the claimant was able to work and available to work, and no penalty is imposed under Section 8-903 after that date.

The decision of the Hearing Examiner is modified.



Thomas W. Keech, Chairman



Hazel A. Warnick, Associate Member

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Copies mailed to:
JACQUELINE A. WHITTINGTON
Local Office - #45

UNEMPLOYMENT INSURANCE APPEALS DECISION

JACQUELINE A. WHITTINGTON

Before the:

SSN #

Claimant

vs.

**Maryland Department of Economic and
Employment Development
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(401) 333-5040**

Appeal Number: 9314698
Appellant: Claimant
Local Office: 45 / Northwest

Employer/Agency

September 14, 1993

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant is able to work, 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,

Whether the appeal should be reopened pursuant to COMAR 24.02.06.02 N.

PREAMBLE

The claimant was initially scheduled to attend an appeal hearing on August 9, 1993. The claimant did not attend that meeting within the ten minute grace period provided by the Agency, therefore the hearing was dismissed. The claimant's appeal was reset for September 2, and the claimant was present. The claimant was unable to attend the initial hearing within a timely manner because the bus transporting her was late. The claimant arrived at the Baltimore Appeals Office thirty minutes late and was informed that her hearing had been dismissed. The claimant traveled by public transportation and she missed her hearing because the bus was late.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits establishing a benefit year effective, May 30, 1993. She is entitled to receive \$106.00 weekly in unemployment insurance benefits. The local Baltimore office denied the claimant's request for benefits because she informed the agency that she was four months pregnant, during the week ending June 5, 1993. The local office set an agency appointment with the claimant in order to establish whether or not she was able and available for employment and if her pregnancy prevented her from working. The agency appointment was set for June 22, 1993 and the claimant disclosed that she was not able to work full time because she had two small children and that she is currently pregnant.

During the appeal hearing, the claimant explained that her availability for full employment is no longer restricted because she has been able to establish child care. The claimant presented a written statement from Ms. Easley explaining that she is willing to babysit for the claimant should the claimant receive a offer for employment. However, the claimant failed to provide medical verification that her pregnancy prevents her from being able and available for employment. The claimant admitted that she is four to five months pregnant, on September 2, 1993.

CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Sections 903 and 904, provide 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.

EVALUATION OF EVIDENCE

The claimant was given one week in order to provide a physician's statement establishing that she is able and available for employment and that her pregnancy does not prevent her from working. The claimant complied with the request made a provide a physician's statement, which establishes that as of September 2, 1993 , the claimant is "able to work". Yet, the claimant's physician statement does not establish whether or not the claimant pregnancy restricts her availibility to accept employment.

During an agency meeting set to discuss the issue of able and available, the claimant informed the local office that she was four months pregnant, on June 22, 1993. On September 2, 1993, the claimant stated again that she is four to five months pregnant. Therefore, it is determined that the claimant's testimony is not credible based upon the testimony submitted explaining that she has been about four months pregnant for three months, and noted from the agencies meeting during June 22, 1993 and the actual hearing on September 2, 1993. Therefore, it is determined that the claimant is not able and available for work within the meaning of the Statute.

DECISION

It is held that the claimant is not able, available and actively seeking employment within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 903, from the week beginning May 30, 1993 and until she provides a physician's statement clearly stating the stage of her pregnancy and whether or not her pregnancy prevents her seeking and performing work.

The claimant's reliance on public transportation establishes good cause for her failure to attend the initial hearing scheduled for August 9, within a timely manner.

The determination of the Claims Examiner is affirmed.

M. M. Thompson
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **September 29, 1993.**

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

Date of hearing: September 2, 1993

ch/Specialist ID: 45555

Seq. No.: 002

Copies mailed on September 14, 1993 to:

JACQUELINE A. WHITTINGTON
LOCAL OFFICE #45