

- DECISION -

Claimant:
LORRAINE M SCHANBERGER

Decision No.: 2060-BR-02

Date: August 15, 2002

Appeal No.: 0210733

Employer:

S.S. No.: L.O. No.: 60

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: September 11, 2002

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. The Board of Appeals makes the following additional findings of fact and reverses the decision of the Hearing Examiner.

The claimant, in spite of her doctor's comments continued to work part time following her cataract surgery and continued to look for work. The claimant had transportation to get her to and from work and job interviews.

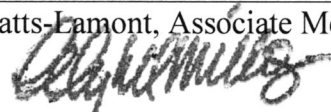
DECISION

The claimant was able and available and actively seeking work within the meaning of Section 8-903 of the Labor and Employment Law. Benefits are allowed from the week beginning December 16, 2001 so long as she is meeting the other requirements of the law.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

Copies mailed to:

LORRAINE M. SCHANBERGER

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

LORRAINE M SCHANBERGER

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: 0210733
Appellant: Claimant
Local Office : 60 / TOWSON CALL
CENTER

May 29, 2002

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 effective October 14, 2001. She received shortly after filing the information regarding rights and obligations under unemployment law and instructions on how to file telecerts. She filed her telecerts regularly from October 14, 2001 to date. On December 17, 2001, the claimant had a cataract operation on one eye. There were complications to this surgery and claimant for a period had double vision and still has some impaired vision. She was advised by her doctor not to drive, but claimant continued to work at a two-day a month job she has as bartender and to actively seek full-time employment. The claimant has furnished to the Agency medical documentation from Margorie Warden, M.D., her doctor, dated April 19, 2002, which states that the claimant is unable to work, has been unable to work since December 17, 2001 and that it is uncertain when she will be able to return to work. The claimant's physician has recommended that she have surgery on her second eye to restore her full vision, but that

surgery has not been scheduled. The claimant has worked as a payroll manager and a bartender.

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 8-907 (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.

COMAR 09.32.02.09C a sick claim shall be filed and documented within 14 days of the last week before the onset of the illness or inability to work for medical reasons that the claimant was registered for work during the week for which the claimant filed.

EVALUATION OF EVIDENCE

The medical evidence shows that the claimant was not disabled from being able and available for work until December 17, 2001. The claimant believed and hoped that her recovery would be rapid and did not advise that she was not able to work and in fact continued working at a part-time job. It appears that claimant is entitled to draw benefits from sick claims under Section 8-907, but that section should not come into play until proper notice was given to the Agency.

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 from the week beginning December 16, 2001 through the week ending April 20, 2002; thereafter claimant is entitled to benefits within the meaning of Section 8-907 of the law provided she meet the other eligibility requirements of the statute.

The determination of the Claim Specialist is modified.

H M Rutledge, 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 of Further Appeal

Any party may request a further appeal 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 June 13, 2002. 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

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

Date of hearing : May 23,2002
GH/Specialist ID: UTW3T
Seq No: 004
Copies mailed on May 29, 2002 to:
LORRAINE M. SCHANBERGER
LOCAL OFFICE #60