

-DECISION-

Claimant:
CASEY JETT

Decision No.: 2085-BH-12

Date: May 14, 2012

Appeal No.: 1118226

Employer:

S.S. No.:

L.O. No.: 63

Appellant: Claimant

Issue: Whether there is good cause to reopen this dismissed case within the meaning of COMAR 09.32.06.02N.

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: June 13, 2012

- APPEARANCES -

FOR THE CLAIMANT:

CASEY JETT

FOR THE EMPLOYER:

FOR THE AGENCY:

PROCEDURAL HISTORY

The Board held a hearing on the matter of Casey Jett on Tuesday March 20, 2012 at 2:00 pm EDT. The parties, duly noticed of the date, time and place of the hearing, were afforded a full and fair opportunity to present their case before the Board of Appeals. The claimant was in attendance. The Agency failed to appear. There were two matters before the Board of Appeals: whether there is good cause to reopen the dismissed case within the meaning of *COMAR 09.32.11.02(O)(2)* and whether the claimant was able available and actively seeking work within the meaning of the *Maryland Annotated, Labor & Employment Article, Title 8, § 903*.

On June 6, 2011, the Chief Hearing Examiner found that the claimant failed to appear and dismissed the case. On August 2, 2011, the Chief Hearing Examiner denied the claimant's *Petition to Reopen*. The claimant filed a timely appeal to the Board.

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. 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.

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 09.32.06.03(E)(1)*.

The threshold issue in this case is whether the claimant, as the appealing party, is entitled to the reopening of the original dismissal of this case. The Board vacates the Chief Hearing Examiner's *Denial of Petition To Reopen* and finds good cause to reopen the instant case.

On this issue, the Board is persuaded that the claimant credibly testified that she did not receive proper notice of her appeal hearing and her appeal rights. Under *COMAR 09.32.11(O)(2)*, a request for the reopening of a case may be granted for the following reasons: the party received the hearing notice on or after the date of the hearing as a result of an untimely or incorrect mailing of the hearing notice by the Appeals Division, or a delay in the delivery of the hearing notice by the United States Postal Service. The claimant had good cause within the meaning of *COMAR 09.32.11(O)(2)*, for the claimant's inability to

attend the appeal hearing. The claimant did not timely receive the Lower Appeal's *Unemployment Insurance Appeals Decision*.

Regarding the second issue, the Board is persuaded that the claimant was unable to work for medical reasons from February 25, 2011 until April 5, 2011. The claimant was able, available and actively seeking work beginning on April 5, 2011. Since that time, the claimant is able, available and actively seeking work. The Board of Appeals shall modify the Agency's benefit determination.

FINDINGS OF FACT

The claimant filed an initial claim for benefits establishing a benefit year beginning July 5, 2010. The Agency rendered an initial determination regarding the issue of whether the claimant was able, available and actively seeking work in this case on April 1, 2011.

In the meantime, the claimant moved and changed her address. She provided a change of address immediately to the Post Office. Subsequently, the claimant provided the change of address with the Agency. The claimant did not receive timely notice of the Lower Appeals Division hearing by June 4, 2011 and, consequently, did not appear. The June 6, 2011 *Unemployment Insurance Appeals Decision* was not sent to the claimant's proper address. As a consequence, the claimant did not receive it and did not timely file a *Petition to Reopen* due to lack of proper notice.

From February 25, 2011 until April 4, 2011, the claimant was unable to work because of her pregnancy and postpartum recovery. The claimant was able to work effective April 5, 2011; therefore, the claimant has been able, available and actively seeking work without restrictions since that date.

CONCLUSION OF LAW

Pursuant to *COMAR 09.32.11.02(B)(1)*, "The interested parties shall be given at least 7 days' notice in writing of the time and place of any hearing before the hearing examiner or Board of Appeals."

Under *COMAR 09.32.06.03 N (2)*, a request for the reopening of a case may be granted for the following reasons: the party received the hearing notice on or after the date of the hearing as a result of an untimely or incorrect mailing of the hearing notice by the Appeals Division, or a delay in the delivery of the hearing notice by the United States Postal Service; an emergency or other unforeseen and unavoidable circumstance prevented a party from both attending the hearing and requesting a postponement of the hearing or a party requested a postponement for the reasons listed in §N(2)(a) and (b) of this regulation, but it was improperly denied. The claimant had good cause within the meaning of *COMAR 09.32.06.03 N (2)*, for the claimant's inability to attend the appeal hearing.

In the instant case, the claimant failed to appear at the hearing and did not otherwise file a timely *Petition to Reopen* for failure to receive proper timely notice. The Court of Special Appeals held in *Prince George's County Department of Social Services v. Knight*, 158 Md. App.130. 854 A.2d 907, (2004), that there are various meanings of the noun "notice" such as knowledge, intelligence, intimation and warning.

Notice may also mean a formal or informal warning or intimation of something or an announcement. The Court goes on to say that “a person has notice of a fact or condition if that person (1) has actual knowledge of it; (2) has received a notice of it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered having been able to ascertain it by checking an official filing or recording.” Even more specifically, the Court ruled that “one cannot ‘respond’ to a written ‘notice’ until he or she receives it.” An application of the above-cited case to the facts in the instant case must lead one to conclude that the hearing notice and dismissal decisions herein, from which certain appeal rights flow, must be considered a notice.

The claimant diligently responded thereto when the claimant received actual notice of the same. Therefore, the August 2, 2011 *Denial of Petition To Reopen* shall be vacated. Additionally, the Board finds the preponderance of the credible evidence supports a finding of good cause to reopen this case. Consequently, the Board may review the merits of the underlying issues.

The claimant has the burden of demonstrating by a preponderance of the evidence that she 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 she 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. *Plaugher 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 finds based upon a preponderance of the credible evidence that the claimant, due to the lack of proper and timely notice, demonstrated good cause within the meaning of *COMAR 09.32.06.03 N (2)* to reopen the instant case and due process grounds to have the *Denial of Petition to Reopen* vacated.

The Board finds based upon a preponderance of the credible evidence that the claimant met her burden of demonstrating that she was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd., 202 Md. 515 (1953)* and *Maryland Annotated, Labor & Employment Article, §8-903*. The claims specialist's initial Benefit Determination shall be modified for the reasons stated herein.

DECISION

THE BOARD VACATES the Chief Hearing Examiner's August 2, 2011 *Denial of Petition to Reopen*.

THE BOARD HOLDS that the claimant's case is reopened for good cause within the meaning of *COMAR 09.32.06.03N(2)*. The Lower Appeals Division's June 6, 2011 *Dismissal* decision is reversed.

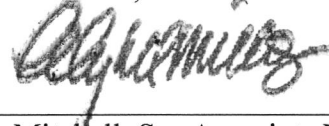
THE BOARD HOLDS that the claimant was not able, available and actively seeking work from the week beginning February 26, 2011 through the week ending April 2, 2011 within the meaning of *Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903*. Benefits are denied for these weeks.

THE BOARD HOLDS that the claimant was able, available, 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 April 3, 2011.

The claims specialist's determination is modified.



Eileen M. Rehrmann, Associate Member



Clayton A. Mitchell, Sr., Associate Member

RD

Date of hearing: March 20, 2012

Copies mailed to:

CASEY JETT

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary