

- DECISION -

Claimant:
ULUM M OWENS

Decision No.: 2108-BR-14

Date: August 11, 2014

Appeal No.: 1336591

S.S. No.:

Employer:
OAKVIEW SNF LLC

L.O. No.: 65

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 10, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion of law and reversal of the hearing examiner's decision.

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 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 he 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).

Md. Code Ann., Lab & Empl. art., Section 8-903(a)(3) provides, "A part time worker may not be determined to be ineligible for the receipt of benefits for a week in which the part-time worker is available for and seeking only part-time work if the part-time worker: (i) is actively seeking part-time work; and (ii) is in a labor market in which a reasonable demand exists for part-time work. *Md. Code Ann., Lab. & Empl. art., Section 8-903(b)* provides, "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, available for work, or actively seeking work under subsection (a)(1) or (3) of this section.

In the instant case, the Board finds the weight of the evidence supports a finding that the claimant is a qualified individual with a disability who is a part-time worker. The Board finds that the claimant is able, available and actively seeking part-time work within the restrictions of her disability. The Board disagrees with the hearing examiner that the claimant must be available for part-time work on a 24/7 basis in order to be eligible for benefits. Because the law must be read liberally in favor of coverage and disqualification provisions must be strictly construed, the Board finds that the hearing examiner misapplied *Section 8-903(b)* in the May 28, 2014 decision's analysis. The claimant, who is otherwise able to work part-time, cannot be punished for receiving necessary treatment three days per week. The claimant has four other days in which to seek and accept part-time employment. The Board does not find

the claimant's medical treatment accommodation disqualifying under *Section 8-903(b)*. Therefore, the Board shall reverse the hearing examiner's decision.

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 notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant met her burden of demonstrating that she was a qualified individual with a disability seeking part-time work and who was otherwise able, available, and actively seeking part-time work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The hearing examiner's decision shall be reversed for the reasons stated herein.

DECISION

The claimant is able to work, available for work 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 October 27, 2013.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

ULUM M. OWENS

OAKVIEW SNF LLC

SUSAN BASS DLLR

OAKVIEW SNF LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ULUM M OWENS

SSN #

Claimant

vs.

OAKVIEW SNF LLC

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: 1336591

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

May 28, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, PATRICIA MUSCADIN

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.

PREAMBLE

In the case at bar, a decision was originally issued on February 24, 2014. That decision was appealed to the Board of Appeals, which issued its remand order dated May 7, 2014, directing a new decision based on the existing record.

FINDINGS OF FACT

The Claimant, Ulum Owens, filed for unemployment insurance benefits establishing a benefit year effective October 27, 2013 with a weekly benefit amount of \$133.00.

At the time she initiated her claim for benefits, the Claimant had several medical conditions including sciatica and lupus. The Claimant receives dialysis treatments on Mondays, Wednesdays and Fridays from

6:00 a.m. until 10:00 a.m. As a result of these conditions, she is unable to work without restrictions. She can't perform any heavy lifting or bending. She is only available to work 25-32 hours per week. She has only worked part-time hours during the course of her employment.

The Claimant is looking for part-time positions as a nursing home receptionist, data entry clerk and/or customer service representative. The customary hours in the aforesaid fields are twenty-four/seven. The Claimant is only available Tuesdays, Thursdays and weekends. When applying for work the Claimant does list her limited availability.

CONCLUSIONS OF LAW

Md. Code Ann., Labor of Emp. Article, Section 8-903(a) 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.

8-903(a)(3) A part-time worker may not be determined to be ineligible for the receipt of benefits for a week in which the part-time worker is available for and seeking only part-time work if the part-time worker: (i) is actively seeking work; and (ii) is in a labor market in which a reasonable demand exists for part-time work.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

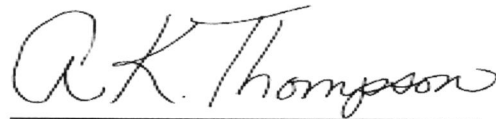
The Claimant had the burden to show, by a preponderance of the evidence, that she is in compliance with Agency requirements. In the case at bar, that burden has not been met.

The Claimant established that she has been employed part-time for the requisite amount of time and therefore can continue to look for part-time work. She is looking for positions that do not require heavy lifting and that she can perform with her disabilities. However, the credible evidence presented indicated that the Claimant suffers from several medical conditions that severely limit her availability to work the customary seven days per week in her chosen fields. The fact that she is unable to work any hours on Mondays, Wednesdays and Fridays creates a substantial restriction on her availability to work. Thus she has not fully satisfied the requirements of Title 8, Section 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. The Claimant is disqualified from receiving benefits for week beginning October 27, 2013 and until the Claimant is fully able, available and actively seeking work.

The determination of the Claims Specialist is affirmed.



A K. Thompson, 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 410-767-2404. 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.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 12, 2014. 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
Phone 410-767-2781

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

Date of hearing: February 04, 2014
BLP/Specialist ID: USB7D
Seq No: 001
Copies mailed on May 28, 2014 to:

ULUM M. OWENS
OAKVIEW SNF LLC
LOCAL OFFICE #65
SUSAN BASS DLLR