



Maryland

Department of Economic & Employment Development

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Governor
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Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5032

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

- D E C I S I O N -

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|-----------|---|---------------|----------|
| | Decision No.: | 2125-BR-93 | |
| | Date: | Dec. 17, 1993 | |
| Claimant: | Walter P. Kincer | Appeal No.: | 9310402 |
| | | S.S. No.: | |
| Employer: | | L. O. No.: | 9 |
| | | Appellant: | CLAIMANT |
| Issue: | Whether the claimant was able, available and actively seeking work, within the meaning of §8-903 of the Labor and Employment Article. | | |

- 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 appeal can be found in many public libraries, in the Annotated Code of Maryland, *Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires January 16, 1994

- A P P E A R A N C E S -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The Board of Appeals adopts the Findings of Fact of the Hearing Examiner, but disagrees with the Conclusions of Law.

The Hearing Examiner concluded that the claimant "was not required to actively seek work" because his "approved training program relieved him of this responsibility." Although not stated in statutory terms, this is a conclusion that the claimant is engaged in "training with the approval of the Secretary" within the meaning of §8-903(e) of the Labor and Employment Article. The Board agrees with this conclusion of law. Under §8-903(c), a person in approved training is exempt from certain provisions of the law, including the provision that the claimant actively seek work. LE §8-903(C) (1).

The Board, however, disagrees with the Hearing Examiner's further conclusion of law. The Hearing Examiner concluded that, although the claimant was in approved training, the claimant was placing an undue restriction on his availability" and should be disqualified on those grounds. The reasoning behind this conclusion was that the claimant "was not totally in charge of his own life, his comings and goings, and was in effect not a totally free agent." In fact, the claimant was committed to a detention center, though he was free to pursue any training or employment at any hours between 7:30 a.m. and 11:00 p.m. In fact, the claimant continued in the same approved training program that he had engaged in prior to the commitment.

The Board disagrees with this second conclusion of law. Under §8-903(c), an individual in approved training is exempted from both the requirement of actively seeking work and the requirement of being available for work. The exemption includes:

(1) for failure to meet the requirements of subsection (a) (1) (i) and (iii) of this section to be available for work and actively seeking work; . . .¹
[Emphasis supplied]

Since the claimant has been found to be in approved training,

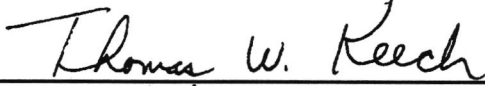
¹It is true that the subsection regarding availability for work is numbered as (a)(I) (ii), a section which is not specifically referred to by citation in §8-903(c). The clear words of the exemption, however, apply to the availability for work. The discrepancy in the citation may be due to the code revision process. Prior to code revision, the exemption clearly applied to availability for work. See, former Article 95A, §4(C) .

he need not meet the availability requirement of §8-903.²


DECISION

The claimant is exempt from actively seeking work or being available for work, because he is in approved training, within the meaning of §8-903(c) of the Labor and Employment Article. No disqualification is imposed under §8-903 of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:HW

kbm

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CLAIMANT

UNEMPLOYMENT INSURANCE - TOWSON

Henry W. Stewart, P.A.

²Since the claimant is exempt from the availability requirement, the Board need not rule on the issue of whether the claimant is available for work, within the meaning of the statute, where he is confined to the detention center only from 11:00 p.m. to 7:30 a.m. daily, and where his work experience is in civil engineering and land development.



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
Mark W. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 511
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Baltimore, Maryland 21201

— D E C I S I O N —

Telephone: (410) 333-5040

Date: June 21 1993
Claimant: Walter P. Kincer
Appeal No.: 9310402
S. S. No.:
Employer: L.O. No.: 09
Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 903.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

July 6, 1993

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

PRESENT

Henry W. Stewart, Esquire

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits establishing a benefit year, effective October 18, 1992 with a weekly benefit amount of \$223.00. Thereafter, the claimant filed for and collected unemployment benefits. On or about April 12, 1993, the claimant was sentenced to the Baltimore County Detention Center for a period of six months beginning April 16, 1993. At that time, the claimant recommended for the work release program to begin April 12, 1993; and, in addition, was allowed to continue the educational

program under the auspices of BOSS and DEED of Baltimore County. As of June 2, 1993, the claimant went on home detention which, in his case, consists of a TV monitoring system. Prior to the home detention, the claimant was required to spend night hours, approximately 11:00 p.m to 7:30 a.m., in the detention center. The claimant's usual work is civil engineering and land development. He worked in this capacity for Baltimore County until a layoff which had occurred in February, 1993.

The claimant presses on appeal that he has been physically able and actively seeking full-time employment except when relieved of the responsibility of looking under the approved training program above-cited. He further presses on appeal that incarceration in his case under the work release program and later home detention, is not an undue restriction on his availability.

CONCLUSIONS OF LAW

To be eligible for unemployment insurance benefits, the claimant must simultaneously be physically able, actively seeking and available for full-time employment without undue restrictions. Failure to meet one or more of these criteria is disqualifying. In the present case, the claimant was not required to actively seek work in that the approved training relieved him of this responsibility. Mindful of the claimant's contention that incarceration in his particular situation first by stay in the detention and then by TV monitoring device at his home, is not an undue restriction of availability, the Hearing Examiner must disagree. The fact that the claimant was not totally in charge of his own life, his comings and goings, and was in effect not a totally free agent constitutes an undue restriction on his availability which precludes his entitlement to unemployment benefits. The determination of the Claims Examiner, denying benefits, was warranted and will be affirmed.

DECISION

The claimant has not met eligibility requirements of Section 903 of the Maryland Code. Benefits are denied for the week beginning April 11, 1993 and until he meets these requirements.

The determination of the Claims Examiner are hereby affirmed.

P. J. Hackett/gr

P. J. Hackett
Hearing Examiner

Date of Hearing: 6/15/93
SPECIALIST ID: 80806
gr\CASSETTE IN FILE
SEQ: 02

Copies mailed on: 6/21/93 to:
Claimant
Unemployment Insurance - Towson (MABS)
Recoveries - Room 413

Henry W. Stewart, P.A.