

 **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*

*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	2170-BR-92
	Date:	Dec. 11, 1992
Claimant: <u>Mary E. Werle</u>	Appeal No.:	9217498
	S. S. No.:	
Employer: <u>Giant of Landover, Inc.</u>	L. O. No.:	23
	Appellant:	CLAIMANT
Issue:	Whether the claimant was able to work, within the meaning of Section 8-903 of the Labor and Employment Article.	

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

January 10, 1993

THE PERIOD FOR FILING AN APPEAL EXPIRES

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— APPEARANCES —

FOR THE CLAIMANT:

REVIEW ON THE RECORD  
FOR THE EMPLOYER:

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

The Board adopts the findings of fact of the Hearing Examiner. The Board also finds as a fact that the claimant remained unable to do any type of work until the week beginning August 16, 1992, but was fully capable after that date to perform the services of her primary occupation as a schoolteacher.

The Board reverses the conclusions of law of the Hearing Examiner. The Robinson case dealt with availability for work not ability to work. A claimant need not be able to do every type of work that she has ever done in order to be able to work within the meaning of §8-903 of the law. Where the claimant remains able to do the type of work which she has customarily performed on a full-time basis, that claimant cannot be disqualified under §8-903 for being unable to perform an additional type of work which she customarily performed on a part-time basis.

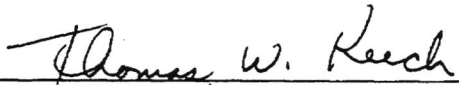
Since the claimant became able to work at her primary occupation during the week beginning August 16, 1992, the penalty will be lifted as of that date.

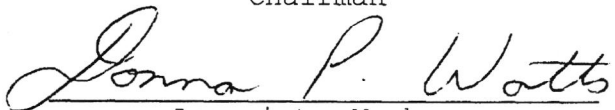
#### DECISION

The claimant is not able to work within the meaning of Section 8-903 of the Labor and Employment Article from the week beginning July 12, 1992 through August 15, 1992. She is disqualified from the receipt of benefits for that period.

Beginning with the week beginning August 16, 1992, the claimant was able to work within the meaning of §8-903 of the Labor and Employment Article. No disqualification is imposed based on ability to work after that date.

The decision of the Hearing Examiner is modified.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Associate Member

K:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Paul E. Draper, Esquire

 **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*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

**— DECISION —**

Claimant:	Mary E. Werle	Date:	Mailed: 10/13/92
			9217498
		Appeal No.:	
		S. S. No.:	
Employer:	Giant of Landover, Inc.	L. O. No.:	023
		Appellant:	CLAIMANT

Whether the claimant was able and available for work within the meaning of Maryland Code, Title 8, Section 903.

Issue: Whether the claimant is entitled to benefits as the result of establishing sick claim status within the meaning of the Title 8-907(a).

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**— 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.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

October 28, 1992

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

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**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Mary E. Werle - Present  
Paul E. Draper, Esq.

Not Represented

**FINDINGS OF FACT**

The claimant filed an original claim for unemployment insurance benefits establishing a benefit year, effective July 12, 1992.

She is entitled to receive \$223 in weekly unemployment insurance benefits. The local Columbia office denied the claimant's unemployment benefits for the week beginning July 12, 1992 because the claimant, who is on a medical leave of absence from her employer, failed to provide the Agency with medical verification of that illness. Therefore, the local office determined that the claimant was not able and available for work within the meaning of the Statute.

The claimant worked as a part-time cashier for Giant Food Store. She has worked as a part-time employee from June, 1989 through July 2, 1992, and earned \$10.40 per hour. The claimant received a medical leave of absence from her employer because she is receiving medical treatment for a herniated disk in her back. The claimant was injured on July 3, 1992. Although the claimant's physician's statement verifies that she is unable to return to her part-time work as a cashier, the claimant is able to return to her professional occupation of teaching. In addition to her part-time employment, the claimant is a full-time teacher. She was laid-off from the John Paul Regional Catholic School on June 12, 1992.

#### CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Section 903 and 904 provides 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.

Maryland Unemployment Insurance Law, Title 8, Section 901, miscellaneous considerations states (a) Illness or disability - an individual may not be denied benefits for any week of unemployment for failure to meet the requirements of Section 903, Subsection a1 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.

Although the claimant's medical documentation states that she is able to accept a position in her profession of teaching, the claimant has not been released to return to work as a cashier for Giant Food Store. Since the claimant's benefit year began July 12, 1992 and the claimant received medical treatment on July 3, 1992, it is determined that the claimant is not eligible to

receive unemployment insurance benefits because her injury occurred prior to her filing for unemployment insurance benefits, within the meaning of the Statute.

It is held that the claimant is not able and available to return to her occupation of a cashier within the meaning of Maryland Unemployment Insurance Law, Title 8, Section 903. Also, since the claimant was not in claim status prior to her injury, she is not eligible to receive unemployment insurance benefits within the meaning of Title 8, Section 907.

DECISION

The determination of the Claims Examiner is affirmed.

*Marsha M. Thompson*  
Marsha M. Thompson  
Hearing Examiner

Date of Hearing: September 30, 1992  
cld/Specialist ID: 23997  
(Cassette Attached to File)

Copies mailed on October 13, 1992 to:

Claimant  
Employer  
Unemployment Insurance - Columbia (MABS)

Paul E. Draper