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STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor
EUGENE A. CONTI, JR., Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

- DECISION -

Claimant:
MARIA F. DISALVO

Decision No.: 02423-BR-96

Date: July 25, 1996

Appeal No.: 9609319

Employer:
HAIRSTYLISTS MGMT SYSTEMS INC

S.S. No.:

L.O. No.: 08

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: August 24, 1996

REVIEW ON THE RECORD

The Board adopts the following findings of fact and reverses the decision of the hearing examiner.



The Board is in receipt of agency form DEED/OUI 315, a physician's statement dated May 16, 1996, submitted by the claimant and completed by the her doctor. The Board admits this agency document into the record as Claimant's exhibit B-1.

Maryland Labor and Employment Article Section 8-903(b) states, in pertinent part that "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 under subsection (a)(1)(i) of [the unemployment insurance law]".

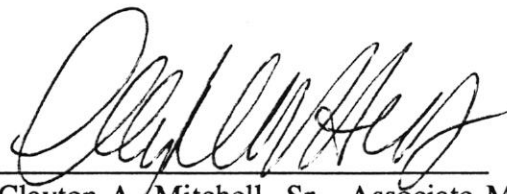
The claimant suffered an injury during an accident in 1995 which resulted in surgery and the need to use a cane. The claimant is unable to stand for more than ten minutes at a time.

The Board finds that the claimant has been released for full-time work by her physician, but because of her disability and because the claimant must now use a cane, the claimant may only accept a full time job which does not require standing, such as the position of a receptionist. The Board finds that other than the restrictions placed upon her by her physician due to her disability, the claimant has shown that she is able and available for full time employment as of March 11, 1996. Clearly, the claimant cannot be disqualified solely because she suffers from a disability, provided she is otherwise qualified for benefits.

DECISION

The claimant is able to work, available for work and actively seeking work within the meaning of §8-903 of the Labor and Employment Article. Benefits are allowed.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

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Copies mailed to:

MARIA F. DISALVO

HAIRSTYLISTS MGMT SYSTEMS INC

HAIRSTYLISTS MGMT SYSTEMS INC

Local Office - #08

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARIA F. DISALVO

Before the:

SSN

Claimant

vs.

HAIRSTYLISTS MGMT SYSTEMS INC

Employer/Agency

**Maryland Department of Labor,
Licensing and Regulation
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9609319
Appellant: Claimant
Local Office: 08 / Annapolis

May 24, 1996

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant is able to work, 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.

FINDINGS OF FACT

The claimant filed a claim for benefits with a benefit year beginning on April 7, 1996 and a weekly benefit amount of \$89.00. The claimant left her last employment as a hair stylist because she had had an accident involving her right foot in November which ultimately resulted in her having surgery on that foot in December, 1995. As a hair stylist, the claimant had to stand while working. She was unable to spend more than ten minutes at a time on her feet and therefore had to take a leave from this position. The claimant's last employer indicated that it would take the claimant back when she is released by her physician and the claimant intends to return to her former employment as soon as she is released by her physician.

The claimant has been a hair stylist since 1985 and has not had any other employment since then. Many years ago, the claimant was in the restaurant business with her husband, which business requires a lot of standing. The claimant has not been reclassified for any other job by the Job Service.

While working as a hair stylist, the claimant occasionally helped the receptionist out at the front or assumed some of the receptionist duties while the receptionist was not there. The claimant has never been employed full time as a receptionist.

The claimant's physician indicated on a physician's statement form, as of April 3, 1996 that the patient cannot work full time now and has been unable to work since November 3, 1995. The doctor further indicates that "patient is unable to stand without a cane. She has chronic right leg pain which limits her ability to stand in one position for more than a few minutes."

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994) provides that a claimant for unemployment insurance benefits must be (1) able and available for work and (2) actively seeking work without restriction upon availability for 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.

EVALUATION OF EVIDENCE

It is clear from the evidence presented that the claimant's primary occupation is that of a hair stylist and that she was unable to perform the duties of a hair stylist due to her right foot injury. In addition, the evidence is clear that the employer is holding the claimant's position for her and that she will return to this position when released by her physician. The claimant argues that in the meantime she is available for work and actively seeking work as receptionist and therefore, meets the requirements of Section 8-903 of the law. The claimant's argument must fail because her physician indicated as of April 3, 1996 that the claimant is unable to work full time. There was some ambiguity in the physician's statement and the claimant was requested to provide an additional clarification statement from her physician by 1:00 p.m. on March 17, 1996 to respond to the question whether or not the claimant is precluded from any full-time work or just work that requires standing. The claimant did not provide the requested medical documentation. Therefore, the physician's statement of April 3, 1996 must be interpreted to mean that the claimant cannot work full time.

The claimant is looking for employment as a receptionist, but has not been reclassified by the Job Services. For the foregoing reasons, the claimant must be disqualified from the receipt of benefits until meeting the requirements of the law.

DECISION

IT IS HELD THAT the claimant is not fully able and available for work without material restriction and/or not actively seeking work within the meaning of Md. Code Ann., Labor & Emp., Section 8-903 (Supp. 1994). Benefits are denied for the week beginning April 7, 1996 and until such time as the claimant is fully able, available and actively seeking work without material restriction.

The determination of the claims examiner is affirmed.


M. Cooper, ESQ
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **June 20, 1996**.

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

Date of hearing: May 15, 1996

DW/Specialist ID: 08008

Seq. No.: 001

Copies mailed on May 24, 1996 to:

MARIA F. DISALVO
HAIRSTYLISTS MGMT SYSTEMS INC
LOCAL OFFICE #08