

***-DECISION-***

Claimant:  
CHARLES E ROSS

Decision No.: 2508-BH-14

Date: September 24, 2014

Appeal No.: 1329938

Employer:

S.S. No.:

L.O. No.: 60

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.

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**- 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: October 24, 2014

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**- APPEARANCES -**

FOR THE CLAIMANT:  
Charles E. Ross

FOR THE EMPLOYER:  
None

FOR THE AGENCY:  
Rebecca Sleeme  
Cindy Spirt

## EVALUATION OF THE EVIDENCE

The Board of Appeals ("Board") 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.

This matter was scheduled for a *de novo* hearing before the Board on September 9, 2014. The claimant appeared and gave credible testimony. The Agency witness, Rebecca Sleeme, also gave credible testimony based upon Agency records. The claimant did not dispute the accuracy of the Agency's records.

The issue before the Board was whether the claimant was meeting the requirements of the Maryland unemployment law as to his availability to work during the weeks beginning July 14, 2013 through the week ending September 21, 2013. The Board finds that he was.

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, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

## FINDINGS OF FACT

The claimant opened a claim for unemployment insurance benefits on February 3, 2013. The claimant filed for and received all his regular unemployment insurance benefits. The claimant then filed for and began receiving extended benefits. Payments of the claimant's extended benefits were stopped the week ending August 31, 2013, due to the fact that the claimant failed to attend a EUC Eligibility Review appointment. As a result, two Fact Finding interviews were scheduled; one regarding the issue of meeting reporting requirements and the other regarding the issue of meeting able and available requirements. No penalty was assessed against the claimant as to the issue of meeting reporting requirements. However, the claim specialist found that the claimant was not meeting the requirements of *Section 8-903* of the Maryland unemployment law and imposed a penalty denying the claimant benefits from the week beginning July 14, 2013 through the week ending September 21, 2013. *See Agency Exhibits B1 and B2*.

The claimant has family in Nebraska. The claimant's brother became ill and in early July, 2013, the claimant's family sent him funds to travel to Nebraska. The claimant and other family members were sharing the responsibility of caring for the claimant's ill brother. The claimant's brother passed away on July 15, 2013 and the claimant returned to Maryland on September 16, 2013.

While in Nebraska the claimant remained available for work. The claimant has worked as a coach bus driver. He has a CDL, Class D license. While in Nebraska the claimant continued to look for work both in Maryland and Nebraska. The claimant would have returned to Maryland if he had been offered employment.

### CONCLUSIONS OF LAW

The claimant has the burden of demonstrating by a preponderance of the evidence that he 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)*.

The claimant testified credibly regarding his having to leave Maryland to help care for his ill brother and his continuing efforts to find employment while in Nebraska. The Maryland Unemployment Law does not require an individual devote all of their time and energies to looking for work. The claimant demonstrated an active and reasonable search to obtain work. Given the technology available today an active search for work can be conducted from just about anywhere and at any time. One need only have access to the Internet. The claimant credibly testified that he would have returned to Maryland if he had been offered employment in the state.

The Board finds based upon a preponderance of the credible evidence that the claimant did meet his burden of demonstrating that he was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd., 202 Md. 515 (1953)* and §8-903. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

### 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 July 14, 2013, and so long as the claimant is meeting the requirements of the law.

The Hearing Examiner's decision is reversed.



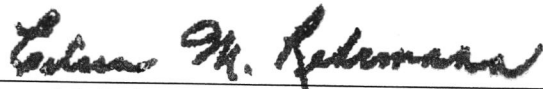
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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member



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Eileen M. Rehrmann, Associate Member

VD

Date of hearing: September 09, 2014

Copies mailed to:

CHARLES E. ROSS

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary