

- DECISION -

Claimant:
AMY P BYERS

Decision No.: 2690-BR-13

Date: September 25, 2013

Appeal No.: 1312071

Employer:
FREDERICK CO BOARD OF EDUCATION

S.S. No.: 369-86-3657

L.O. No.: 63

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: October 25, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

After the claimant was laid off from her job as a full time teacher, the claimant sought full-time suitable work. The claimant was unable to find a full-time job and signed up as a part-time substitute teacher for Frederick County Public schools, earning \$15.91 an hour. The claimant continued to search for a full time job.

Due to financial restraints, the claimant limited her availability for her part time work to hours that did not require her to place her children in child care. The claimant did not limit her availability for long term substitute jobs.

The claimant continued to make at least job contacts per week. The claimant continued to make efforts to return to work full time without any restriction.

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 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)*.

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 credible evidence established that the claimant was unemployed and was actively seeking work as she was making at least three job searches per week. Additionally, the claimant had no restrictions on her seeking full time work which demonstrates that the claimant was able and available for full time work.


The Board finds that the hearing examiner erred when determining that the claimant was not available to work when referencing her part time position. The claimant was available without restriction for full time work. The Board has stated that it is the clear intention of the unemployment statute is to encourage people to work, even part time if that is all that is available and to provide partial benefits, where appropriate, as long as they are still able and available for full time work. *Helmstetter v. United Postal Services*, 1507-BH-82.

The Board finds based upon a preponderance of the credible evidence that the claimant met her burden of demonstrating that she was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and *Maryland Annotated, Labor & Employment Article*, §8-903 beginning the week of September 2, 2012' provided the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The decision of the hearing examiner 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 November 11, 2012.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

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UNEMPLOYMENT INSURANCE APPEALS DECISION

AMY P BYERS

SSN #

Claimant

vs.

FREDERICK CO BOARD OF EDUCATION

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: 1312071

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

May 14, 2013

For the Claimant: PRESENT, ALECIA FRISBY, ESQ.

For the Employer: PRESENT, JAMES A. STULLER, NANCY DIETZ

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.

FINDINGS OF FACT

The claimant, Amy Byers, filed for unemployment insurance benefits establishing a benefit year effective August 26, 2012 with a weekly benefit amount of \$338.00.

The claimant became employed with the Frederick County Board of Education on November 12, 2012. She is employed as a daily substitute teacher, earning \$15.91 per hour. At the time of hire, the claimant indicated her availability for substitute teaching work at various elementary, middle and high schools. She stated she was also available for long-term substitute work and stated that she could be available if notified in advance or on short notice. She listed ten dates between November 14, 2012 and March 27, 2013 when she was unavailable. On March 26, 2013, she changed her availability from "all day" Monday through Friday to "9:00 am to 3:30 pm," Monday through Friday.

The claimant is married with two children, ages nine and eleven years. The claimant is only available to substitute from 9:00 a.m. to 3:30 p.m. because she has to put her children on the school bus at 8:00 a.m. and be there to get them at 4:00 p.m. The claimant's husband works during this time and is unavailable to do this.

The claimant accepted a long-term substitute position with the employer that ended on March 26, 2013. She filed for unemployment benefits through the week ending January 19, 2013. She then stopped filing through the week ending March 23, 2013 and then reopened her claim. During the time she worked as a long-term substitute, the claimant was able to put her children on the school bus because she did not have to be at work until 8:30 am. She got a neighbor to make sure her children got off the bus and went into their home at 4:00 pm. The claimant was home by 4:15 p.m. Since then, the claimant accepted two half-day substitute positions that did not conflict with her stated hours of availability.

The employer needs 500 substitute teachers on any given day and sometimes has days where as many as 130 substitute jobs are unfilled. The employer's elementary schools are generally open at 8:30 am until 4:00 p.m. Elementary, middle and primary schools in Thurmont, Maryland start at 8:10 a.m. and end at 3:40 p.m. High schools start at 7:00 a.m. Between March 25, 2013 and April 10, 2013, the employer has had 15 assignments that the claimant was unavailable to accept.

The claimant has been making at least three job contacts per week and keeps a written record of these. She is seeking work as a teacher and also in the data entry, administrative, office and pre-school fields.

CONCLUSIONS OF LAW

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

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 been partially met. Since being hired as a substitute teacher, the claimant has restricted her availability because of a lack of child care. She accepted a position as a daily substitute and the employer did not promise that she would have only long-term assignments. However, she is not available to work during the times required for most substitute jobs offered by the employer. Accordingly, a disqualification is warranted and benefits will be denied for those weeks in which the claimant demonstrated a material restriction upon availability for work.

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. Benefits are denied from the week beginning November 11, 2012 until meeting the requirements of the law.

IT IS FURTHER HELD THAT the claimant is able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed from the week beginning September 2, 2012 through November 10, 2012, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



R M Tabackman, 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 of Further Appeal

This is a final decision. Any party may request a further appeal 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 May 29, 2013. 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: May 08, 2013

BLP/Specialist ID: WCU81

Seq No: 004

Copies mailed on May 14, 2013 to:

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