

**- DECISION -**

Claimant:	Decision No.:	2727-BR-11
JASMINE P PRESSEY	Date:	May 16, 2011
	Appeal No.:	1048182
Employer:	S.S. No.:	
	L.O. No.:	65
	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: June 15, 2011

**REVIEW ON THE RECORD**

After a review on the record, the Board deletes the last two sentences of the hearing examiner's findings of fact. The Board adopts the hearing examiner's modified findings of fact, but concludes that those facts warrant different conclusions of law.

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

PHONE: 410.767.2781 • FAX: 410.767.2787 • TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE



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 09.32.06.02(E)*.

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. *Plaughter 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 hearing examiner found, that because the claimant is not available for work twenty-four hours per day, she is not eligible for benefits. The types of work which the claimant is seeking are primarily conducted during day time hours. A claimant is not required or expected to be available for all work, at all times, in order to satisfy the eligibility requirements. A claimant is expected to be reasonably available during the hours customary to his or her regular occupation. The claimant here has satisfied that requirement. Further, there was no evidence that, should the claimant be offered work for other hours, she would be unable or unwilling to find child-care. See *Harwell*, 1861-BR-92 and *Weaver v. Roadway Express*, 942-BR-81.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

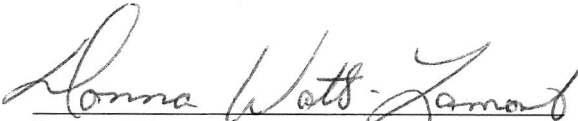
The Board finds based upon a preponderance of the credible evidence that the claimant has met her burden of demonstrating that she was able, available, and actively seeking work within the meaning of

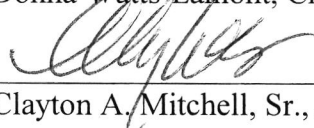
*Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be reversed for the reasons stated herein.

**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 7, 2010.

The Hearing Examiner's decision is reversed.

  
\_\_\_\_\_  
Donna Watts-Lamont, Chairperson

  
\_\_\_\_\_  
Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

JASMINE P. PRESSEY

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

JASMINE P PRESSEY

SSN #

Vs.

**Claimant**

**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: 1048182

Appellant: Claimant

Local Office : 65 / SALISBURY  
CLAIM CENTER

January 28, 2011

**For the Claimant:** PRESENT, LALIT JAIN, ESQ.

**For the Employer:**

**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 filed for unemployment insurance benefits establishing a benefit year effective August 29, 2010 with a weekly benefit amount of \$410.00.

Since opening her claim for benefits, the claimant has been seeking work as an administrative assistant, receptionist, IT Service Desk or Security, for which the customary hours of employment are 8:00 a.m. to 5:00 p.m. in the case of clerical work and twenty-four hours, seven days per week in the case of IT Technical Support or security. The claimant's most recent job was as a service desk analyst in an IT department. The claimant is not attending school or training that conflicts with the aforementioned customary hours and has access to reliable transportation. The claimant has one child that attends school. The claimant is able to work between 7:00 a.m. and 6:00 p.m. but would be unable to work at night due to her child care responsibilities.

## 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 not been met. The claimant's most recent job, as a service desk analyst, and the jobs she has been seeking, including security companies, often requires employees to work shifts that the claimant testified she would be unable to work due to her child care responsibilities. Accordingly, a disqualification is warranted and benefits will not be allowed.

## 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 for the week beginning November 7, 2010 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



---

M McKennan, 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 to Petition for Review**

Any party may request a review 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 February 14, 2011. 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: January 18, 2011  
AEH/Specialist ID: USB7P  
Seq No: 003  
Copies mailed on January 28, 2011 to:

JASMINE P. PRESSEY  
LOCAL OFFICE #65