



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383 - 5032

—DECISION—

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 279-BH-84

DATE: March 13, 1984

CLAIMANT: James D. Plaughner

APPEAL NO.: 04500

S. S. NO.:

EMPLOYER: Preston Trucking

L.O. NO.: 11

APPELLANT: EMPLOYER & AGENCY

ISSUE: Whether the claimant was able to work, available for work, and actively seeking work within the meaning of §4(c) of the law.

NOTICE OF RIGHT OF APPEAL TO COURT

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

April 12, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

James D. Plaughner - Claimant
Vickie Hedian - Attorney
Roger Wyett - Witness

Robert Healy -
Operations Manager

DEPARTMENT OF EMPLOYMENT & TRAINING
John Roberts - Special Counsel

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was last employed by Preston Trucking Company of Preston, Maryland. During this employment, the claimant reported to work when the employer informed him by telephone that work was available for him. For this reason, the claimant was referred to as an "on call" employee. The claimant worked under this arrangement between two and three years. Calls to report for work were made at anytime during the day.

On January 14, 1983, the claimant was laid-off by the employer because of a lack of work. Thus, his "on call" status was suspended. While laid-off, the claimant actively sought work with other employers.

During the period of lay-off, the employer attempted to reach the claimant by phone on several occasions to inform him of the availability of one day of work. When the employer was unable to reach the claimant by phone after several attempts, the employer questioned the availability of the claimant for work as required by §4(c) of the Unemployment Insurance Law.

CONCLUSIONS OF LAW

Section 4(c) of the law provides that the term "available for work" means, among other things, that a claimant is actively seeking work. In Robinson v. Maryland Emp. Security Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court stated that a claimant may not impose conditions and limitations on his willingness to work and still be "available" as the statute requires. Thus, the term "available for work" refers to a general willingness to work demonstrated by an active and reasonable search to obtain work without restrictions. It is also apparant that availability for work cannot be confused with availability to answer the telephone when a particular potential employer calls offering work.

Here, the claimant has demonstrated that he is available for work within the meaning of §4(c) of the law. The fact that the claimant was not available to answer the telephone on occasions when work would have been offered is of no moment, especially since the caller was the very same employer who originally caused the claimant's unemployment.

DECISION

The claimant is able and available for work within the meaning of §4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The decision of the Appeals Referee is affirmed.

Maurice E. Hill

Associate Member

Loyal A. Warwick

Associate Member

Thomas W. Keech

Chairman

D:W:K

kmb

DATE OF HEARING: October 18, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

H. Victoria Hedian, Esquire

John Roberts - Special Counsel

M. C. Ashley - U. I. Director

UNEMPLOYMENT INSURANCE - CHESTERTOWN



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS
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 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

- DECISION -

CLAIMANT:	James D. Plaucher	DATE:	6/1/83
		APPEAL NO.:	04500
		S. S. NO.:	
EMPLOYER:	Preston Trucking	L. O. NO.:	11
		APPELLANT:	Claimant
ISSUE:	Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law.		

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON June. 16, 1983

-APPEARANCES-

FOR THE CLAIMANT:

Claimant-Present
 Victoria Hedrian, Esquire

FOR THE EMPLOYER:

Robert Healy,
 Operations Manager

FINDINGS OF FACT

A determination of the Claims Examiner had denied benefits to the claimant for the week beginning February 20, 1983 until March 26, 1983, on the ground that the claimant did not respond to call-ins from the employer while he was in a layoff status. Benefits were denied under Section 4(c) of the Law. The claimant filed an appeal to this determination.

The claimant had been employed by Preston Trucking Company, in Preston, Maryland, beginning July 7, 1977. He was a Truck Driver

and his most recent rate of pay was \$13.26 an hour. The claimant was laid off on January 19, 1983, and subsequently filed an original claim for unemployment insurance benefits, which became effective February 7, 1983. The weekly benefit amount for this claim was established as \$153. The claimant's occupation is listed as a Truck Driver. After January 1983, the claimant was in a layoff status and did not have to make himself available for work. The claimant was called by the employer on numerous occasions. He responded to some of these calls, specifically on ~~February 7, 1983~~. But, on other calls from February 20, 1983 through March 26, 1983, the claimant did not respond, because on occasions, he did not receive the information from the employer concerning the phone calls. When the claimant did not respond, another individual was contacted. There was a period of time when the claimant's telephone was not in service and he could not have received any phone calls. The claimant was not on an "on-call" basis, but if he had been, he would have had to been available for the call-ins. There is no specific time that the employer arranged to call the claimant. The claimant could have received a call any hour of the day on a moment's notice. The claimant was not required to be at the phone twenty-four hours a day to intercept these calls to work. While the claimant was unemployed and filing claims for benefits, he made personal contacts for employment, the majority of them being with other truck companies where he thought he could obtain work.

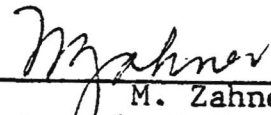
CONCLUSIONS OF LAW

It is concluded that the claimant met the eligibility requirements of Section 4(c) of the Maryland Unemployment Insurance Law. He was able and available for work during the period covered by the appeal. The claimant was available for any work that the employer had and did respond to calls of employment. There is nothing to show that the claimant had to be available at the phone twenty-four hours a day. If he were at the phone daily without a break, he would not have had opportunity to make his personal contacts for work. The evidence shows that the claimant has made personal contacts with other employers that he thought could use him. It shows also that the claimant responded to the employer to work when he received the message. The claimant worked all hours of work that he was aware of. Under the circumstances, it must be held that the claimant did meet the eligibility requirements of Section 4(c) of the Law, and that he responded to the best of his knowledge and ability when notified to report.

DECISION

The claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are allowed to the claimant under Section 4(c) of the Law.

The determination of the Claims Examiner which denied benefits from February 20, 1983 until March 26, 1983, shall be reversed.



M. Zahner
Appeals Referee

Date of Hearing: 5/24/83

rc

(2802)-Brice

Copies mailed to:

Claimant
Employer
Unemployment Insurance - Chestertown

H. Victoria Hedrian, Esquire