

- DECISION -

Claimant:
TIFFANY A BURTON

Decision No.: 308-BR-11

Date: January 28, 2011

Appeal No.: 1018129

S.S. No.:

Employer:

L.O. No.: 64

Appellant: Claimant

Issue: 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.

- 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: February 28, 2011

REVIEW ON THE RECORD

After a review on the record, the Board modifies the facts by deleting "stated as the reason for this, that she" from the first sentence of the second paragraph. The Board adopts the hearing examiner's modified findings of fact and makes the following additional findings of fact:

The claimant was placed on a two-week suspension by her employer. On the advice of her union representative, she filed a claim for unemployment insurance benefits. The claimant did not seek other employment because she knew she was returning to her employer on April 22, 2010.

The claimant attends school for three hours, one evening per week, on a flexible schedule. This is part of a “distance learning” program in which much of the schoolwork is done electronically, from the student’s home computer, at the pace of the individual student. Her schooling does not interfere with her ability to work full-time.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner’s decision.

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 09.32.06.02(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. *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)*.

A claimant who is temporarily laid off for a certain period of less than ten weeks may be exempt from actively seeking work during the layoff. However, Section 8-904 does not exempt a laid off worker from being able to work and available for work. *Spaniard, 409-BR-84*

Where a claimant, has lost his job in January, 1991, and who had a bona fide offer to begin a new job on February 1, 1991, was not unreasonable in refusing another job offer as a bus driver at that time. However, two months later, when the original job offer was retracted, the claimant should have been willing to work full-time as a bus driver. *Settle v. Bill Rohrbaugh's Charter Service Corporation*, 1552-BR-91.

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.

Although a significant amount of the hearing concerned the claimant's school hours and related matters, the Board finds that the claimant's educational pursuits have had no impact on her availability to work full-time. The claimant's class schedule involves 3 hours, one evening per week, for a six-week period. The remainder of the claimant's education is done at home, on-line, at the convenience of the claimant.

The remaining issue, thus, is whether the claimant was required to pursue other employment during her suspension. The Board finds that, under these particular circumstances, she was not. The claimant was suspended for two-weeks. This is quite similar, for purposes of determining the applicability of work search requirements, to a lay-off *see Spaniard, above*. Similarly, using the analysis of *Settle, above*, the claimant had a specific, certain job to return to as of April 22, 2010. She was only to be off work for a two-week period. The logic is similar to that of *Settle*, in that the requirement to accept other work was seen as impractical where that claimant had another job which would begin soon after his unemployment began. In the instant case, the claimant had a job to which she would return, soon after her suspension. Requiring the claimant to seek other employment during a two-week, temporary suspension would potentially put the claimant in a position of quitting a full-time job to accept some other job when she had no desire or intent to leave that employment. If the claimant's suspension had been for a much longer period of time, this analysis would likely be different. However, a two-week period hardly seems sufficient to warrant requiring the claimant to seek other employment in order to be eligible for a maximum of two weeks of benefits.

The Board notes that the reason for the suspension may be one which would disqualify the claimant within the meaning of §§ 8-1001, 8-1002 or 8-1003. However, that issue is not before the Board at this time.

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.

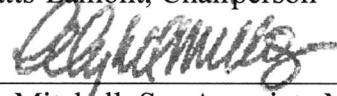
DECISION

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 April 4, 2010.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

TIFFANY A. BURTON

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TIFFANY A BURTON

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: 1018129
Appellant: Claimant
Local Office : 64 / BALTOMETRO
CALL CENTER

June 09, 2010

For the Claimant: PRESENT

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 a claim for unemployment insurance benefits establishing a benefit year beginning April 4, 2010 with a weekly benefit amount of \$410.00.

From April 4, 2010 through April 22, 2010 the Claimant did not make any job contacts. The claimant stated as the reason for this, that she was suspended from her job and returned to work on April 22, 2010.

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.

Section 8-903 does not specifically require that a claimant make personal job contacts, although that is the usual standard which is applied. The standard contained in the statute is whether the efforts an individual has made to obtain work have been reasonable and are such efforts as an unemployed individual is expected to make if he/she is honestly looking for work. Smith, 684-BR-83.

The Secretary shall exempt only from the "actively seeking work" eligibility condition a claimant who, at the time the claimant files an initial claim, provides a definite return-to-work date to the same employer that is within 10 weeks of the last day of employment, if the: (a) Return-to-work date is verified by that employer; and (b) Layoff is as a result of vacation, inventory, or any other purpose causing unemployment, except a labor dispute. Code of Maryland Regulations 09.32.02.07.

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 evidence establishes that the claimant did not make an active search for work within the meaning of the Maryland Unemployment Insurance Law during the week from April 4, 2010 through April 22, 2010. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that he/she seeks benefits. It is not permissible to cease looking at any time while still in claim status. In the instant case, as the claimant has failed to make an active search for work, he/she will be disqualified from receiving benefits.

DECISION

IT IS HELD THAT the claimant was 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 April 4, 2010 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



A K Thompson, 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 June 24, 2010. 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 22, 2010
DW/Specialist ID: RBA15
Seq No: 001
Copies mailed on June 09, 2010 to:
TIFFANY A. BURTON
LOCAL OFFICE #64
SUSAN BASS DLLR