

**- DECISION -**

Claimant:	Decision No.:	3082-BR-14
AUBREY A BLACK	Date:	February 20, 2015
	Appeal No.:	1336748
Employer:	S.S. No.:	
	L.O. No.:	63
	Appellant:	CLAIMANT - REMAND FROM COURT

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: March 22, 2015

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**PROCEDURAL HISTORY**

On April 7, 2014, the Board of Appeals denied the claimant's request for a review of a decision concerning his claim for unemployment insurance benefits, determining that the claimant filed a late appeal without good cause. The claimant filed a timely appeal to the Circuit Court for Baltimore County. The Circuit Court for Baltimore County in an order dated September 12, 2014, remanded this case to the Board of Appeals, Department of Labor, Licensing and Regulation to determine if the claimant is eligible to receive unemployment benefits.

### EVALUATION OF EVIDENCE

The claimant proved by a preponderance of the evidence that he is able, available and actively seeking work. The claimant has no physical limitations on his ability to do the jobs in the areas of clerk, cleaner or delivery person. There is no limitation on the claimant's availability. The claimant made reasonable efforts to apply for work in his areas that he is likely to find work.

### FINDINGS OF FACT

It has been adjudicated and determined that the claimant filed a timely appeal.

The claimant filed for unemployment insurance benefits establishing a benefit year, effective November 3, 2013 with a weekly benefit amount of \$430.00.

Since November 10, 2013 the claimant has been seeking work as a clerk, delivery person, or cleaner for which the customary hours of employment are 8:00 a.m. until 5:00 p.m. The claimant is 85 years old. The claimant is seeking full time and part time work. The claimant has made fifteen job contacts since opening his claim for unemployment benefits.

The claimant is not attending school or training that would conflict with the customary hours. The claimant has no child or elder care responsibilities that would limit his availability. The claimant has reliable transportation and otherwise has no material restrictions upon his ability or availability to perform work in his occupational field.

### CONCLUSION 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.*

Article - Labor and Employment § 8-903.

- (a) (1) Except as otherwise provided in this section, to be eligible for benefits an individual shall be:
  - (i) able to work;
  - (ii) available for work; and
  - (iii) actively seeking work.
- (2) In determining whether an individual actively is seeking work, the Secretary shall consider:

- (i) whether the individual has made an effort that is reasonable and that would be expected of an unemployed individual who honestly is looking for work; and
- (ii) the extent of the effort in relation to the labor market conditions in the area in which the individual is seeking work.
- (b) The Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under subsection (a)(1)(i) of this section.
- (c) Notwithstanding any other provision of this section or § 8-904 or § 8-907(a) or (b) of this subtitle, an individual who otherwise is eligible to receive benefits and who is in training with the approval of the Secretary may not be denied benefits:
- (1) for failure to meet the requirements of subsection (a)(1)(ii) and (iii) of this section to be available for work and actively seeking work; or
  - (2) for failure to apply for or refusal to accept suitable work under § 8-1005 of this title.

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).

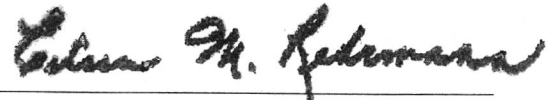
A claimant should actively seek work in those fields in which he is most likely to obtain employment. *Goldman v. Allen's Auto Supply*, 1123-BR-82; also see and compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1 (2002).

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).

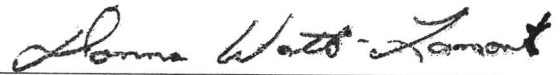
### DECISION

The Board finds based upon a preponderance of the credible evidence that the claimant met 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 Maryland Annotated, Labor & Employment Article, §8-903. Benefits are allowed from the week beginning November 10, 2013 provided the claimant is meeting the other requirements of the law.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

KJK

Copies mailed to:

AUBREY A. BLACK

SUSAN BASS DLLR

JAMES A. LIST ESQ.

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

AUBREY A BLACK

SSN #

**Claimant**

vs.

**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: 1336748  
Appellant: Claimant  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

February 10, 2014

**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, Aubrey A. Black, filed for unemployment insurance benefits establishing a benefit year effective November 3, 2013 with a weekly benefit amount of \$430.00.

Since November 10, 2013, the claimant has been seeking work as a clerk, delivery person, or cleaner, for which the customary hours of employment are 8:00 a.m. to 5:00 p.m. The claimant is 85 years old. The claimant is seeking full time and part time employment. The claimant has arthritic knees and is not able to stand for extended periods of time without having to sit. The claimant has made fifteen job contacts since opening his claim for unemployment benefits. The claimant is not attending school or training that conflicts with the aforementioned customary hours, has no child/elder-care responsibilities, has access to

reliable transportation and otherwise has no material restrictions upon his ability or availability to perform work in his occupational field.

### 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

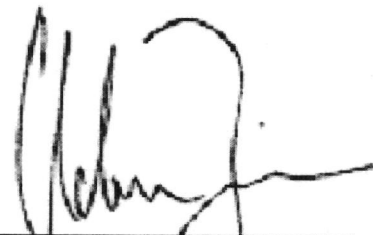
The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence, that he is in compliance with Agency requirements. In the case at bar, that burden has not been met. The claimant has made less than two job contacts each week. Therefore, the Hearing Examiner does not find that the claimant is actively seeking work. Further, the claimant has restrictions, specifically issues with his knees, that would make him not able and available to perform the jobs that he is applying for. Accordingly, a disqualification is warranted and benefits will not be allowed for those weeks in which the claimant demonstrated a material restriction upon availability for work, as discussed above.

### 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 10, 2013 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



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A C Zimmerman, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 25, 2014. 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 17, 2014  
CH/Specialist ID: WCU60  
Seq No: 003  
Copies mailed on February 10, 2014 to:

AUBREY A. BLACK  
LOCAL OFFICE #63  
SUSAN BASS DLLR