

- DECISION -

Claimant:
VONDA M DUNCAN

Decision No.: 3100-BR-13

Date: November 20, 2013

Appeal No.: 1312854

S.S. No.:

Employer:

L.O. No.: 64

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: December 20, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However, the Board concludes that these facts warrant a different conclusion 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

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.

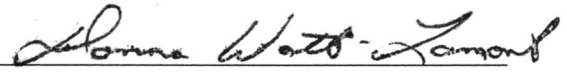
The hearing examiner disqualified the claimant from receiving unemployment insurance benefits due to the fact that she did not have childcare "in place" for her two children. Childcare was not needed until such time as the claimant had secured employment. It is not reasonable to expect an unemployed individual to place their child in and pay for daycare while they are unemployed.

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 §8-903 from the week beginning June 10, 2012, provided the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

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 June 10, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

VONDA M. DUNCAN

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

VONDA M DUNCAN

Before the:

**Maryland Department of Labor,
Licensing and Regulation
Division of Appeals**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

SSN #

Claimant

vs.

Employer/Agency

Appeal Number: 1312854

Appellant: Claimant

Local Office : 64 / BALTOMETRO
CALL CENTER

May 30, 2013

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, Vonda M. Duncan, filed for unemployment insurance benefits establishing a benefit year effective June 10, 2012 with a weekly benefit amount of \$261.00.

Since opening her claim for benefits, the claimant has been seeking work as a licensed social worker in a clinical setting, with public agencies, in the research field and teaching. The claimant's occupational hours are generally Mondays through Fridays during the day, though some social workers in a residential setting work all shifts on all days. The claimant is not attending school or training that conflicts with the aforementioned customary hours and has access to reliable transportation and has no health problems that would affect her ability or availability to perform work in her occupational field.

However, since opening her claim for benefits, the claimant did not have daycare in place for her two (2)

children. As of the week beginning August 26, 2012, the claimant has had childcare in place for her children.

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. Specifically, the claimant has had daycare in place for her children as of late August. Accordingly, a disqualification is not warranted and benefits will be allowed for those weeks in which the claimant demonstrated no 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 from the week beginning June 10, 2012 through the week ending August 25, 2012;

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 August 26, 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.

B Taylor

B. Taylor, 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 June 14, 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 16, 2013
BLP/Specialist ID: RBA4C
Seq No: 002
Copies mailed on May 30, 2013 to:

VONDA M. DUNCAN
LOCAL OFFICE #64
SUSAN BASS DLLR