

- DECISION -

Claimant:	Decision No.:	3130-BR-14
MARLON K ALLERS	Date:	April 20, 2014
	Appeal No.:	1419832
	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: May 20, 2014

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on September 19, 2014. That Decision held the claimant was not able to work, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning July 13, 2014.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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 finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. The Board makes the following additional findings of fact:

The claimant was released by his physician to work full time effective September 8, 2014.

Md. Code Ann., Lab. & Empl. Art., §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 claimant has the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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)*.

Being able to work is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. The concept of being able to work requires an individual to be physically and mentally capable of performing the type of work being sought. Persons with injuries, illness or disabilities may still be able to work if they seek appropriate work consistent with their training, education and experience. In *Connor v. City of Baltimore, 416-BR-87*, the Board held: "A claimant who is restricted from performing certain work is not disqualified under Section 8-903 if he shows that he is able to do other work and is, in fact, seeking other work that he is capable of performing during the time has the restriction." The Board has also held, in *Swafford v. U. S. Postal Service, 252-BH-89*: "When severe limitations are placed upon a claimant's ability to work, the claimant has the burden of showing not only that she was seeking work, but seeking work that she could do, given her limitations."

In his appeal, the claimant enclosed a medical statement signed by his physician which stated that the claimant was released for full time work effective September 8, 2014. The Board has accepted the medical statement dated September 8, 2014 as evidence marked as claimant exhibit B1.

Based on the credible evidence that the claimant was able to work effective September 8, 2014 in a different job, the Board finds that the claimant is able, available and actively seeking work.

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.

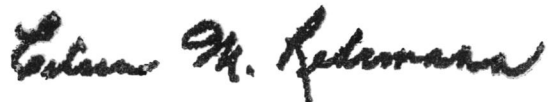
The Board finds based upon a preponderance of the credible evidence that the claimant did not meet his burden of establishing that he was able to work for the period of week beginning July 14, 2014 through week ending September 6, 2014. The claimant did meet his burden of demonstrating that he was able, available, and actively seeking work, from the week beginning September 7, 2014 within the meaning of *Maryland Annotated, Labor & Employment Article, §8-903*. The decision shall be modified for the reasons stated herein.

DECISION

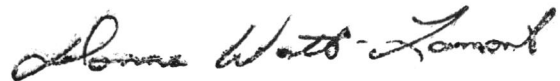
The claimant is not able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. The claimant is disqualified from receiving benefits from the week beginning July 13, 2014 and through the week ending September 6, 2014.

If your situation has changed and you now have sufficient information to establish that you are able to work, available for work, and actively seeking work in order to have the above denial lifted, or if you require further information concerning the eligibility requirements of the law, you may contact Claimant Information Service at call 410-949-0022 in the Baltimore region, or 1-800-827-4839 outside the Baltimore area. Hearing impaired claimants with TTY may contact Client Information Service at 410-767-2727 within the Baltimore areas, or 1-800-827-4400 outside the Baltimore area.

The Hearing Examiner's decision is modified.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MARLON K. ALLERS

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARLON K ALLERS

SSN #

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: 1419832

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

September 19, 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, Marlon K Allers, filed for unemployment insurance benefits establishing a benefit year effective July 13, 2014, with a weekly benefit amount of \$416.

The claimant was denied benefits because he is not and available for work due to diabetes. He is under doctor's care and not able and available for work and contrary to the Maryland Unemployment Insurance Law.

The claimant's treating physician opined in a medical statement dated July 21, 2014 that the claimant is not able work full-time without any restrictions. (Claimant Exh #1).

The claimant has an upcoming appointment with his treating physician this month.

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 been not met. At the hearing, the claimant offered credible testimony establishing that he still under doctor's care and cannot engage in full-time work.

As the Board of Appeals noted in Dean v. High's of Baltimore, Inc., 429-BR-89, "A disqualification under Section 8-903 ends when the claimant is released by the doctor to return to work."

In conformity with Dean, Id., in the case at bar, the claimant is denied benefits.

DECISION

IT IS HELD THAT the claimant is not able, available and actively seeking works within the meaning of Md. Code Ann., Labor & Emp. Article, and Section 8-903. Benefits are denied week beginning July 13, 2014, and until meeting the requirements of the law.

The determination of the Claims Specialist is affirmed.



C E Edmonds, 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 October 06, 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: September 04, 2014

DW:aeh/Specialist ID: RBA11

Seq No: 001

Copies mailed on September 19, 2014 to:

MARLON K. ALLERS
LOCAL OFFICE #64