

**- DECISION -**

Claimant:  
TYISE M JACOBS

Decision No.: 3395-BR-12

Date: September 24, 2012

Appeal No.: 1211604

S.S. No.:

Employer:

L.O. No.: 65

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.

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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: October 24, 2012

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant is willing to try to change her class schedule or to drop classes which would conflict with employment should she be offered a full-time position.

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 09.32.06.03(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.

In her appeal, the claimant reiterates her testimony from the hearing. She contends: "A full-time job is my main priority and if one comes along I would delay school for it." The evidence from the hearing supports this contention.

The Board further notes that the claimant is only in school for a small minority of the work week, particularly where she is seeking employment which occurs during all hours of all of the days of the week. There is no requirement that a claimant be available to work all of the hours of the day, or the week. The Agency expects and requires a claimant to be available to work a normal work week for the occupation in which they have training, experience and education and in which they are seeking employment. The

claimant is an EMT. Persons in those types of positions work all different shifts, on varying days. The Board finds the claimant is available to work full-time in an EMT (or similar) position.

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 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 for the reasons stated herein.

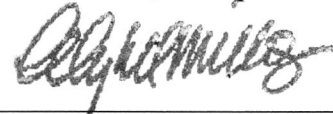
### DECISION

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 March 4, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

TYISE M. JACOBS

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TYISE M JACOBS

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: 1211604

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

April 19, 2012

**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**

Tyise Jacobs (Claimant) filed a claim for unemployment insurance and established a benefit year beginning on July 30, 2011, and she qualified for a weekly benefit amount of \$240.00.

The Claimant is a certified emergency medical technician (EMT). It is customary in that industry for EMTs to work overnight shifts, rotating shifts and morning shifts.

The Claimant is enrolled in school. On Tuesdays, she is in class from 8:30 a.m. to 11:30 a.m. On Thursdays, she is in class from 8:00 a.m. to 8:00 p.m. The Claimant is available to work after 12:00 p.m. on Tuesdays and at any time during the day on Mondays, Wednesdays, Fridays, Saturdays and Sundays. However, if she were offered a position that required her to work Tuesday mornings or anytime on Thursday, she would be unable to accept it.

## CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment, § 8-903 (2008) 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 (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.

A claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

There is no reason to disqualify a claimant under the availability provisions when his part-time classes have been arranged to be flexible enough to change to accommodate any work schedule. Mallett, 1132-BR-92.

## EVALUATION OF EVIDENCE

In reaching this decision, I considered all the available evidence, including the Claimant's testimony. There were no evidentiary conflicts for me to resolve.

The Claimant testified that the only day during the week where she is not available to work at all during the day is Thursday; however, she also acknowledged that she is unavailable for work on Tuesday mornings. The Claimant is seeking jobs that require her to be available to work overnight shifts, rotating shifts and morning shifts. The Claimant offered no evidence that her classes are flexible enough to accommodate any work schedule or that she is willing to drop her classes in order to accept work. Her school attendance, therefore, operates as a substantial restriction on her availability for work in her customary occupation. Accordingly, I hold the evidence fails to show that the Claimant is meeting the requirements of Section 8-903 and benefits will be denied.

## 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 March 4, 2012 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is reversed.

*L Dargan*

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L Dargan  
Administrative Law Judge

### **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**

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 May 04, 2012. 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: April 06, 2012  
BLP/Specialist ID: USB7S  
Seq No: 004  
Copies mailed on April 19, 2012 to:

TYISE M. JACOBS  
LOCAL OFFICE #65  
SUSAN BASS DLLR