

- DECISION -

Claimant:
DA AIRAH C DAYE

Decision No.: 3398-BR-12

Date: September 19, 2012

Appeal No.: 1206943

S.S. No.:

Employer:

L.O. No.: 63

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: October 19, 2012

REVIEW OF THE RECORD

After a review of the record, after deleting “on Monday mornings and” from the third sentence of the second paragraph, and deleting the entire fifth sentence of the third paragraph, the Board adopts the hearing examiner’s modified findings of fact. However, 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 restates her testimony from the hearing and contends there were errors in the hearing examiner's findings of fact. The Board has conducted a thorough review of the evidence of record from the Lower Appeals hearing and agrees with the claimant's contentions.

The claimant never stated she was unwilling to change her class schedule in order to accommodate an offer of work. The claimant stated only that she was not willing to drop out of school. The claimant takes her classes on-line and in the evenings. She has flexibility to work full-time, particularly as she is seeking work which occurs during all hours of the day and night.

The hearing examiner found the claimant did not provide documentation in support of her statement that she could change her class schedule. The claimant was never asked to provide such documentation. Absent a request for this, the fact that she did not offer any documentation should not be used against her.

Additionally, unless there is some reason to doubt the veracity of a claimant's testimony, an affirmative statement to that effect should be sufficient upon which to base a finding of fact.

The claimant's testimony established that she is able to work. Her testimony showed that she is engaged in an appropriate and active work search. The claimant's testimony further demonstrated that she is available for full-time work during most hours of most days. That satisfies the Agency's requirements.

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 January 15, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

DA AIRAH C. DAYE

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DA AIRAH C DAYE

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: 1206943
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

April 04, 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

The Claimant filed for unemployment benefits during the week beginning January 15, 2012 with a weekly benefit amount of \$172.00. Since filing for benefits the claimant has made at least two job contacts each week and is actively seeking work in a variety of fields. The claimant, Da Airah Daye, was denied benefits from the time she opened her claim due to attending school.

The claimant is taking classes on line and in person at Coppin State University. The claimant takes three classes on line and can sit for those lectures at any time. She also takes Economics and Accounting classes on Monday mornings and on Monday and Wednesday evenings. When she initially opened her claim the claimant expressed an unwillingness to drop to her classes and an inability to change the scheduled time for the classes. The claimant did not provide any documentary evidence to demonstrate that she can change her

class schedule, The claimant is looking for work as a medical receptionist or companion. Those positions are available during times that conflict with her schooling, but also offer the possibility of working overnight shifts that would not conflict with the class schedule.

CONCLUSIONS OF LAW

Normally, a claimant attending day school does not meet the basic requirement of Md. Code Ann., Labor & Emp. Article, Section 8-903 that a claimant for unemployment insurance benefits must be available for work, without restriction. In the case of Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327 (1977), the U.S. Supreme Court held that "...attending school during daytime hours imposes a greater restriction upon obtaining full-time employment than does attending school at night. In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."

In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant for unemployment insurance benefits may not impose restrictions upon availability and still meet the standard of the statute. Attending day school is a material restriction upon one's availability for work and is thus disqualifying.

EVALUATION OF THE EVIDENCE

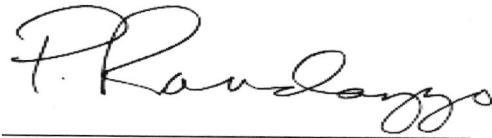
Md. Code Ann., Labor of Emp. Article, Section 8-903 provides that a claimant for unemployment insurance benefits shall be (1) able to work; (2) available for work; and (3) actively seeking work. In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant may not impose restrictions upon his or her willingness to work and still be available as the statute requires.

The claimant had the burden to show, by a preponderance of the credible evidence, that she is able, available and actively seeking work within the meaning of the Maryland Unemployment Insurance Law. In the case at bar, that burden has not been met. Although the claimant testified that she is fully available for work with no restriction due to attending school the preponderance of the credible evidence did not bear this out. When she initially filed the claimant was unwilling and stated that she was unable to change her school schedule. At the hearing on this matter she had done a complete reversal but she did not provide any documentation to corroborate that she can change her class schedule with no penalty or difficulty. Without more, the claimant's bald assertions are simply insufficient to satisfy the burden of proof in this matter. Therefore the claimant has not met her burden at this time, but may present evidence to the Agency in the future or at the conclusion of her school semester.

DECISION

IT IS HELD THAT the claimant is not able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are denied week beginning January 15, 2012 until meeting the requirements of the Law.

The determination of the Claims Specialist is affirmed.



P G Randazzo, 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

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 April 19, 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: March 07, 2012

CH/Specialist ID: WCU1J

Seq No: 001

Copies mailed on April 04, 2012 to:

DA AIRAH C. DAYE

LOCAL OFFICE #63

SUSAN BASS DLLR