

- DECISION -

Claimant:
SHARENA M TAYLOR

Decision No.: 3399-BR-12

Date: September 19, 2012

Appeal No.: 1207332

S.S. No.:

Employer:

L.O. No.: 61

Appellant: Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: October 19, 2012

REVIEW OF THE RECORD

After a review of the record, and after deleting the last sentence of the second paragraph, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

The claimant made two job contacts during the weeks ending March 3, 2012, and March 17, 2012. The claimant made no job contacts during the week ending January 28, 2012. The claimant made one job contact during each of the other weeks in question here.

The Board concludes that these facts warrant different conclusions of law and a modification 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 she 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. *Plaughter 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 contends she now has proof of other job contacts she made during the time relevant to this decision. The claimant's opportunity to present this evidence was at the Lower Appeals hearing. The claimant was sent a Notice of Hearing which specified that her work search was the subject of the hearing. The claimant appeared, with counsel. The claimant had a full and fair opportunity to present evidence of her work search at the Lower Appeals hearing.

On appeal, the Board reviews the evidence of record from the hearing. The Board will only order a new hearing or the taking of additional evidence if there has been some clear error, a defect in the record, or a failure of due process. After its review of this matter the Board finds no reason to order a new hearing or to take additional evidence.

The evidence of record establishes that the claimant satisfied the job search requirement for two of the weeks in question. The claimant should be eligible for benefits for those weeks. The claimant did not perform an adequate work search during the other seven weeks at issue here. She is not eligible for benefits for those weeks.

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.

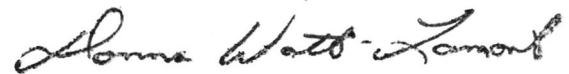
The Board finds based upon a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903 for the weeks January 28, 2012 through February 25, 2012, the week ending March 10, 2012, and the week ending March 24, 2012. The claimant did meet her burden of proof and establish eligibility for the weeks ending March 3, 2012, and March 17, 2012. The claimant is eligible for benefits for those weeks. The decision shall be affirmed, as modified, for the reasons stated herein and in the hearing examiner's decision.

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 January 22, 2012 through the week ending February 25, 2012, the week beginning March 4, 2012, and the week beginning March 18, 2012.

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 for each of the weeks beginning February 26, 2012, and March 11, 2012.

The Hearing Examiner's decision is modified.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

SHARENA M. TAYLOR

SUSAN BASS DLLR
LIA S. RETTAMMEL ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHARENA M TAYLOR

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: 1207332
Appellant: Claimant
Local Office : 61 / COLLEGE PARK
CLAIM CENTER

April 19, 2012

For the Claimant: PRESENT, LIA S. RETTAMMEL, ESQ.

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

FINDINGS OF FACT

The claimant, Sharena Taylor, filed a claim for unemployment insurance benefits establishing a benefit year beginning January 22, 2012, with a weekly benefit amount of \$430.00.

From April 1, 2012, through the date of the hearing, the claimant made two or more job contacts per week. Prior to this time, the claimant only sporadically made the required job contacts. For example, during the weeks of January 29, 2012, through February 25, 2012, from February 19, 2012 through February 25, 2012, and from March 18, 2012 through March 31, 2012, the claimant made fewer than two (2) job contacts each week.

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.

Section 8-903 does not specifically require that a claimant make personal job contacts, although that is the usual standard which is applied. The standard contained in the statute is whether the efforts an individual has made to obtain work have been reasonable and are such efforts as an unemployed individual is expected to make if he/she is honestly looking for work. Smith, 684-BR-83.

The Secretary shall exempt only from the "actively seeking work" eligibility condition a claimant who, at the time the claimant files an initial claim, provides a definite return-to-work date to the same employer that is within 10 weeks of the last day of employment, if the: (a) Return-to-work date is verified by that employer; and (b) Layoff is as a result of vacation, inventory, or any other purpose causing unemployment, except a labor dispute. Code of Maryland Regulations 09.32.02.07.

While Section 8-903 does not demand that a claimant look for work 24 hours per day, seven days per week, looking for work must be a claimant's primary activity. Where a claimant was immersed in her summer school studies, and limited job contacts to inquiries by telephone or through the newspaper, the claimant did not meet the eligibility requirements of Section 8-903. Poole, 145-BH-84.

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 evidence establishes that the claimant did not make an active search for work within the meaning of the Maryland Unemployment Insurance Law for the period of time between January 22, 2012 and March 31, 2012. The claimant submitted her work search records during the hearing. *See* Claimant's Exhibit A. While those records reflect that she made at least two (2) job contacts during the weeks of March 11, 2012, and April 1, 2012, the fact that she met the bare minimum requirement during those weeks is not sufficient to show that she was fully meeting the requirements of Section 8-903. The claimant did not make the required minimum contacts during the other weeks in that time period. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that one seeks benefits. It is not permissible to cease looking at any time while still in claim status. Searching for work must be the claimant's primary activity. *See Poole, supra*. The evidence fails to establish that this was the case for the claimant during the period between January 22, 2012 and March 31, 2012. Therefore, benefits will be denied for that those weeks.

DECISION

IT IS HELD THAT the claimant was 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 January 22, 2012, through March 31, 2012.

IT IS FURTHER HELD THAT the claimant is fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed commencing April 1, 2012, and thereafter, provided meets all requirements of the 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.

K. Boettger

K. Boettger, 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 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 05, 2012

DAH/Specialist ID: WCP2M

Seq No: 001

Copies mailed on April 19, 2012 to:

SHARENA M. TAYLOR

LOCAL OFFICE #61

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