

**- DECISION -**

Claimant:  
ILKHAM I SHAKHBAZOV

Decision No.: 3578-BR-13

Date: August 23, 2013

Appeal No.: 1314815

S.S. No.:

Employer:  
MID ATLANTIC MOVING AND  
STORGE INC

L.O. No.: 64

Appellant: Claimant

Issue: Whether the claimant failed, without good cause, to apply for or to accept available, suitable work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1005.

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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: September 22, 2013

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**REVIEW OF THE RECORD**

After a review of the record, after deleting the word "allegedly" from the second sentence of the first paragraph, and after deleting the fifth 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 declined the offer of work from his former employer because he had moved to Ohio and could not commute so extensively.

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)*.

Section 8-1005 of the Labor and Employment Article provides that an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that the individual, without good cause, failed to;

- i. apply for work that is available and suitable when directed to do so by the Secretary;
- ii. accept suitable work when offered; or
- iii. return to the individual's usual self-employment when directed to do so by the Secretary.

In his appeal, the claimant reiterates his initial statement to the claim's examiner that he had moved to Ohio and could not commute ten hours each way to accept this employment. The claimant offers other contentions related to his financial situation and his need for benefits. The claimant does not cite to the evidence of record and makes no other contentions of error.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The employer appeared and testified. The hearing examiner received the Fact Finding Report into evidence [Agency Exhibit #1] in which the claimant had explained he had moved to Ohio and provided that information to the Agency. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. The Board finds that sufficient evidence exists in the record from which a decision may be made.

The Board has thoroughly reviewed the record from the hearing. The claimant did not receive the Notice of Hearing and, therefore, did not appear at the hearing. The claimant had advised the Agency on April 24, 2013, that he had moved to Ohio. [See Agency Exhibit #1] The claimant's address of record was not changed and the Notice of Hearing was sent to the claimant's former address in Maryland.

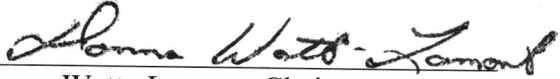
The claimant explained, to the claim's examiner, that he declined this offer of employment because he had moved to Ohio. The claimant's residence is approximately 10 hours from the employer's location. It was completely impractical for the claimant to consider commuting such a distance. This established good cause for the claimant's refusal to accept otherwise suitable work.

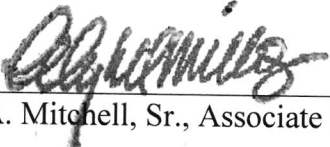
The Board finds based upon a preponderance of the credible evidence that the employer did not meet its burden of demonstrating that the claimant failed to accept available, suitable work within the meaning of *Md. Code Ann., Lab. & Empl. Art. §8-1005*. The decision shall be reversed for the reasons stated herein.

### DECISION

It is held that the claimant did not fail without good cause, to accept available, suitable work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1005. No disqualification is imposed under this section of law. Benefits are allowed.

The Hearing Examiner's decision is reversed.

  
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Donna Watts-Lamont, Chairperson

  
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Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

ILKHAM I. SHAKHBAZOV  
MID ATLANTIC MOVING AND  
SUSAN BASS DLLR  
MID ATLANTIC MOVING AND  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ILKHAM I SHAKHBAZOV

SSN #

**Claimant**

vs.

MID ATLANTIC MOVING AND  
STORGE INC

**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: 1314815

Appellant: Employer

Local Office : 64 / BALTOMETRO

CALL CENTER

June 11, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, JEFFREY WOODALL

**For the Agency:**

**ISSUE(S)**

Whether the claimant failed to apply for or accept available, suitable work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 1005.

**FINDINGS OF FACT**

The claimant, Ilkham I Shakhbazov, filed a claim for unemployment insurance benefits, establishing a benefit year beginning December 16, 2012, and a weekly benefit amount of \$430.00. The Claims Specialist determined that the claimant failed to accept an offer of work on April 1, 2013 because the claimant had allegedly moved out of state, and allowed the claimant benefits pursuant to Maryland Code, Labor & Employment Article, Title 8, Section 1005.

The claimant previously worked for the employer from May 2009 until December 12, 2012. The claimant filed for unemployment insurance benefits in December 2012 after he was laid off by this employer due to a lack of work. On April 1, 2013, the employer offered the claimant employment. The offered work was the same type of work the claimant previously performed; at the same rate of pay and with the same hours; and

the employer offered immediate employment. The claimant turned down the offer and did not attend the hearing on this matter to explain why the offer was unsuitable. The address on file for the claimant, to which the hearing notice was sent, is in the State of Maryland.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article Section 8-1005 provides that a claimant may be disqualified from benefits where the claimant, without good cause, has failed to:

- (1) apply for available, suitable work when directed to do so;
- (2) accept suitable work when offered; or
- (3) return to usual self-employment when directed to do so.

Section 8-1005 states that the following factors shall be considered in determining whether work is suitable for an individual:

- (1) the degree of risk involved to the health, morals and safety of the individual;
- (2) the experience and previous earnings of the individual;
- (3) the previous training and physical fitness of the individual;
- (4) the length of unemployment and the prospects for securing local work in the individual's usual occupation; and
- (5) the distance of the available work from the individual's residence.

Section 8-1005 provides for a claimant's disqualification for a violation of its provisions. Such disqualification begins with the latest week in which the claimant was to have applied for work, was notified that suitable work was available, or was directed to return to self-employment, and continues for at least 5 but no more than 10 weeks or until the claimant becomes re-employed and has earned wages in covered employment that equal at least 10 times the claimant's weekly benefit amount. The duration of the penalty shall be governed by the factors cited above.

In Ervin v. Government Services Savings and Loan, 297-BR-85, the Board of Appeals held "The claimant's former job is clearly suitable under Section 8-1005."

### EVALUATION OF THE EVIDENCE

The employer had the burden to show, by a preponderance of the credible evidence, it made the claimant an offer of suitable employment, as defined by Maryland Unemployment Insurance Law. In the case at bar, the employer met this burden.

In the case at bar, the employer offered the claimant a position which the claimant previously held with this employer, with the same hours and rate of pay. Clearly, this was an offer of "suitable" employment.

Accordingly, the burden of proof now shifts to the claimant to show he accepted the position or had either good cause or valid circumstances for declining the offer. The claimant did not attend the hearing to explain why the offer was unsuitable. At the time the offer was made, the claimant indicated to the employer that he was allegedly going to or had moved to Ohio. However, the employer believes the

claimant is still living in the area based on reports from current employees who have seen the claimant in Maryland. The address on file for the claimant, to which the hearing notice was sent, is in the State of Maryland however, the claimant did not appear for the hearing on this matter.

Accordingly, the employer made an offer of suitable employment, which the claimant refused for unknown reasons, and benefits are, therefore, denied.

## DECISION

IT IS HELD THAT the claimant failed without good cause to apply for and/or accept available, suitable work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1005. The claimant is disqualified from receiving benefits for the week beginning March 31, 2013 and until the claimant becomes reemployed and earns wages in covered employment that equal at least 10 times the claimant's weekly benefit amount.

The determination of the Claims Specialist is reversed.

*V. Nunez*

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V. Nunez, 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 26, 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: June 04, 2013  
DAH/Specialist ID: RBA3H  
Seq No: 002  
Copies mailed on June 11, 2013 to:

ILKHAM I. SHAKHBAZOV  
MID ATLANTIC MOVING AND  
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SUSAN BASS DLLR