

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	360-BR-90	
	Date:	April 10, 1990	
Claimant:	Brian S. Dawson	Appeal No.:	8915513
		S. S. No.:	
Employer:	Bayliner Marine Corporation	L O. No.:	3
		Appellant:	CLAIMANT
Issue:	Whether the claimant was available for work within the meaning of Section 4(c) of the law.		

—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON **May 10, 1990**

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The only issue in this case is whether the claimant was available for work within the meaning of Section 4(c) of the law.

The reason that the claimant left his previous employment is a different issue. That issue was addressed by the agency in a determination which is not in the record in this case. In that determination, the claimant was given a five-week penalty for having voluntarily quit his job within the meaning of Section 6(a) of the law. That decision was not appealed by any party and was final.

Much of the testimony taken at the hearing, however, concerned the reason for the separation from employment. This testimony was relevant only insofar as it illuminates the background of the claimant's work history. The claimant's availability for work must be examined as of the time of his application, in the light of this background.

While the claimant was last working, he was attending classes three evenings a week. None of the classes began before six, and his normal work day ended at 3:30. As soon as the claimant stopped working, he obtained the ability to switch all but one of his classes to daytime classes, if necessary for employment reasons. Only one class, from 6:00 p.m. to 7:40 p.m. on Thursdays, could not be changed. The claimant has worked and attended part-time classes for six years. By agreement with his last employer and two previous employers, he has managed to comply with his employment duties and attend classes. (The only exception is the situation involving disputed overtime requirements at his last employment.)

Considering all of these factors, the Board concludes that the claimant was available for work within the meaning of Section 4(c). There were only a few hours per week during one evening during which the claimant was not available for work, and his work history shows in general an ability to conform to the requirements of a normal work day and also to go to school on a flexible part time schedule.

DECISION

The claimant was available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed on the basis of availability for work under this section of the law for the week beginning November 26, 1989, and thereafter.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:D

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Mailed: February 21, 1990

Date:

8915513

Claimant: Brian S. Dawson

Appeal No.:

S. S. No.:

Employer: Bayliner Marine Corporation

L.O. No.:

3

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law. Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

March 8, 1990

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES A MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

This case was previously scheduled for hearing on January 10, 1990. The notice was sent to the claimant informing him of

that. The claimant did not receive the notice and promptly thereafter made inquiry, as a result of which he filed a timely request to have the case rescheduled.

The claimant, during the week ending December 2, 1989 was attending school. The claimant was asked to work by the employer during hours that conflicted with his school and would not do so. The claimant was asked to work overtime and refused. The claimant could not work past 5:00 p.m. The claimant wanted to go to school at 6:00 p.m. and had to eat and take care of other matters in the interim. The claimant is diabetic and must eat at regularly scheduled times.

The claimant is unwilling to work at anytime while he is attending classes.

CONCLUSIONS OF LAW

The claimant had good cause to reopen the dismissed case. He did not receive appropriate notice of the hearing.

The claimant is not entitled to unemployment insurance benefits while he is attending school because this constitutes too great an impediment to him working all of the times usual and regular in the employment that he is seeking.

The claimant was let go from his previous job because he was unable to work all of the hours usual and regular to that kind of employment.

DECISION

There is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

The claimant was not available for work and actively seeking work as required by Section 4(c) of the Law. He is disqualified from receiving unemployment insurance benefits from the week beginning November 26, 1989 until he meets all of the requirements of the Law.

The determination of the Claims Examiner is affirmed.


Martin A. Ferris
Hearing Examiner

Date of Hearing: 02/09/90
pdd/Specialist ID: 03251
Cassette No: 1177
Copies mailed on 02/21/90 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)