

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	382-BR-89
	Date:	May 11, 1989
Claimant:	Appeal No.:	8902226
	S. S. No.:	
Employer:	L. O. No.:	50
	Appellant:	CLAIMANT

Issue: Whether the claimant was able to work, available for work and actively seeking 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.

June 10, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 claimant was denied benefits for a period of three weeks by the Hearing Examiner on the ground that he was unavailable for work. The basis for the conclusion of unavailability was the fact that the claimant's car was broken, limiting his availability for a job.

A claimant cannot be eligible for benefits unless he is available for work, within the meaning of Section 4(c) of the law. The Maryland Court of Appeals has ruled, however, that the mere lack of an automobile cannot, by itself, be conclusive evidence that a claimant is not available for work. Smith v. Employment Security Administration, 282 Md. 267, 383 A.2d 1108 (1978).

In any case, of course, the totality of circumstances can show that a claimant is not available for work. In this case, the Board concludes that the Hearing Examiner evaluated the totality of the circumstances incorrectly.

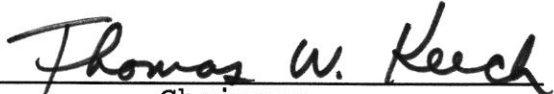
The Hearing Examiner placed considerable weight on the claimant's statements in the file. Although this was certainly not incorrect in itself, the Board notes that the claimant has some difficulty with the language and that the statements were apparently prepared for him by someone else. The statements seemed to have ignored the possibility of the claimant finding work in his own home town and concentrated on his unavailability for work 50 or more miles away. At the hearing, however, the claimant testified plainly that the fact that his car was broken did not limit him from searching for or being available for work in his own town.

Since the claimant cannot be penalized for the simple lack of an operating automobile, and since he was making efforts to find work in his town and was, in fact, available for such work, the Board concludes that the claimant was available for work during the three weeks in question.

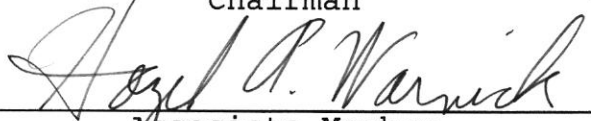
DECISION

The claimant was able to work and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law from January 29, 1989 through February 18, 1989.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

COPIES MAILED TO:

CLAIMANT

OUT-OF-STATE CLAIMS

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201



Maryland

Department of Economic & Employment Development

— DECISION —

	Date:	Mailed: 3/23/89
Claimant: John G. Tzortzis	Decision No.:	8902226
	S. S. No.:	
Employer:	L.O. No.:	50
	Appellant:	Claimant

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON April 7, 1989

— APPEARANCES —

FOR THE CLAIMANT

FOR THE EMPLOYER:

Claimant - Present
(Telephone Hearing)

Other: L. Banks

FINDINGS OF FACT

The claimant filed an out-of-state claim for unemployment insurance benefits against the State of Maryland, effective November 6, 1988. The claimant gave a statement to the Department of Economic and Employment Development through the Michigan Employment Security Commission, in which he said that he

was having transportation problems, his car broke down on January 28, 1989, and he was not available for full-time work because of lack of transportation. Based upon that disclosure by the claimant he was disqualified by the Claims Examiner as not meeting the requirements of Section 4(c) of the Law.

The claimant took a timely appeal and in his appeal stated, "I cannot find a job in this area. I could find a job if I can go to other towns about 50 miles away. I do own a car but it is not in a running condition to take me that distance." That appeal was filed in person on February 21, 1989.

Subsequently, he satisfied the Maryland Department that he was able to seek work actively because he no longer had transportation problems. He made that information available around March 1, 1989, and it was found at that time that he was available for work during the week ending February 25, 1989, but not prior thereto.

CONCLUSIONS OF LAW

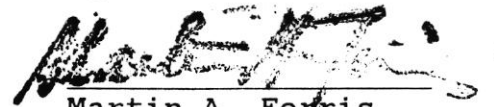
The claimant by his own statements was not available for work and actively seeking work without restriction as required by Section 4(c) of the Law. He was not available because of his lack of transportation as he stated in the statements he gave to the Local Office in Michigan and in his appeal statement. He subsequently remedied his problem and became able to seek work in the areas where work was available and will be allowed benefits for the week ending February 25, 1988, but denied for the weeks ending February 4, 11, and 18, 1989.

DECISION

The claimant was not able to work, 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 for the week beginning January 29, 1989 and until February 18, 1989.

The claimant is meeting the requirement of Section 4(b) of the Law as of February 19, 1989.

The determination of the Claims Examiner is affirmed, but modified to reflect the correct ending date of the disqualification.



Martin A. Ferris
Hearing Examiner

Date of Hearing: March 21, 1989
lr/Specialist ID: 50495/2343
Copies mailed on March 23, 1989 to:

Claimant
Out of State Claims - (MABS)