

- DECISION -

Claimant:	Decision No.:	3824-BR-12
JAMES H ERICSON JR	Date:	September 26, 2012
	Appeal No.:	1211824
	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 26, 2012

REVIEW OF THE RECORD

After a review of the record, and after adding: "The claimant began his schooling on February 27, 2012.", the Board adopts the hearing examiner's modified findings of fact and conclusions of law.

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 his appeal, the claimant attempts to clarify some dates and he reiterates his testimony from the hearing. He also explains that he had been eligible for benefits in past years while on a temporary lay-off from his regular employer.

The Board has conducted a thorough review of the evidence of record from the Lower Appeals hearing. That evidence is sufficient, generally, to support the hearing examiner's findings of fact, as amended, and his conclusions of law. The decision is slightly modified to reflect the date upon which the claimant began his schooling and became unavailable for work.

The claimant was seeking a variety of full-time positions between the time he was laid off from his former employer and the time he was to begin school. The claimant was prepared to forego school if he had been able to secure other employment. The claimant did not begin his school until February 27, 2012. It was as of that week that the claimant became unavailable for work due to his school schedule and his inability to accept most full-time work. When the claimant completed his course of study, on May 25, 2012, he immediately began searching for work, without limitation, and became fully available at that time.

As to prior years where the claimant was able to receive benefits during a period of lay-off, the facts were different this time. Previously, the claimant was laid off with an expectation he would be called back to work. The claimant was not required to seek other employment, but allowed to receive benefits during this specific period of lay-off. This time, however, the claimant rendered himself unavailable for work because of attending school. Regardless of the claimant's reasons for going to school, it made him unavailable for work. In order to receive benefits a claimant must be both qualified, based upon his separation from employment, and eligible, based upon compliance with Agency requirements. In past years, the claimant was both qualified and eligible. This year, the claimant was qualified, but not eligible.

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.

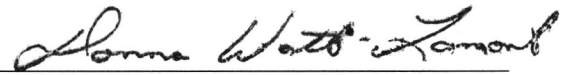
The Board finds based upon a preponderance of the credible evidence that the claimant did not meet his burden of demonstrating that he was able, available, and actively seeking work, for the week beginning February 26, 2012, through the week ending May 26, 2012, within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be modified for the reasons stated herein and in the hearing examiner's decision.

DECISION

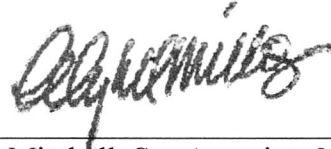
The claimant is not able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. The claimant is disqualified from receiving benefits from the week beginning February 26, 2012 and until May 26, 2012, and is meeting the requirements of the law.

The Hearing Examiner's decision is Modified.

If your situation has changed and you now have sufficient information to establish that you are able to work, available for work, and actively seeking work in order to have the above denial lifted, or if you require further information concerning the eligibility requirements of the law, you may contact Claimant Information Service at call 410-949-0022 in the Baltimore region, or 1-800-827-4839 outside the Baltimore area. Hearing impaired claimants with TTY may contact Client Information Service at 410-767-2727 within the Baltimore areas, or 1-800-827-4400 outside the Baltimore area.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

TBW/mw

Copies mailed to:

JAMES H. ERICSON JR

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

JAMES H ERICSON JR

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: 1211824

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

May 08, 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, James H Ericson, filed for unemployment insurance benefits establishing a benefit year effective January 15, 2012 with a weekly benefit amount of \$311.00.

Claimant is currently enrolled as a student at James Rumsey Technical Institute, a truck driver school in West Virginia. His classes are held Monday through Friday, 8:00 am to 2:30 pm. Claimant is seeking work in the truck driving field. If the Claimant were offered work that conflicted with his school schedule, he would not be able to accept it. The Claimant cannot change his class schedule and cannot drop his classes. Claimant had sought a UI waiver for training but was denied because there was reasonable expectation of employment in the claimant's most recent employment as a tree trimmer. Claimant has obtained his license

and would be able to take a position as a driver as of the week of April 1, 2012. Prior to this the claimant had searched for work but was limiting his job search to evening work since he knew he was going to attend the training school.

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.

A claimant attending an educational institution does not normally meet the requirements of Md. Code Ann., Labor & Emp. Article, Section 8-903 which provides that a claimant for unemployment insurance benefits must be able, available and actively seeking work. School attendance normally operates as a substantial restriction upon availability for work.

However, a claimant for unemployment insurance benefits who is a student will not be disqualified from the receipt of benefits pursuant to Section 8-903 if he or she can demonstrate that he or she is genuinely attached to the work force, despite attendance at school. Student status is not disqualifying per se, but the claimant must demonstrate that he or she is primarily a worker who also goes to school, rather than a student who works. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

A claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

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 Claimant had the burden to show, by a preponderance of the evidence that he is in compliance with Agency requirements. In the case at bar, that burden has not been met. The Claimant admitted that he would be unable to accept any job that conflicted with his school schedule. Accordingly, the claimant's school attendance does impose a substantial restriction on his availability for work. Therefore, the Claimant has failed to demonstrate that he is in compliance with the requirements of Section 8-903 and benefits must be denied at this time. Claimant applied for a waiver for job training attendance but was denied. Claimant also testified that since he applied for benefits the week of January 15, 2012, he was only looking for evening employment since he knew he would be attending classes during the day. Claimant has been able to accept full time day time work since he received his appropriate license effective the week of April 1, 2012.

DECISION

IT IS HELD THAT the claimant is not fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are denied for the week beginning January 15, 2012 through the week ending March 31, 2012.

The determination of the Claims Specialist is modified.



A S Levy, 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 23, 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 17, 2012

DAH/Specialist ID: WCU2P

Seq No: 002

Copies mailed on May 08, 2012 to:

JAMES H. ERICSON JR

LOCAL OFFICE #63

SUSAN BASS DLLR