

- DECISION -

Claimant:
VERONICA BREMERMAN

Decision No.: 3834-BR-13

Date: September 06, 2013

Appeal No.: 1316476

S.S. No.:

Employer:
SOUTHWEST AIRLINES COMPANY

L.O. No.: 63

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland 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 07, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact and conclusions of law but modifies the 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 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 the instant case, the Board finds the weight of the credible evidence supports a finding that the claimant was able, available and actively seeking work from April 7, 2013 until she had her baby on May 5, 2013. The hearing examiner's decision erroneously did not account for the week of April 7, 2013 in the decision. The Board shall modify the decision accordingly.

The Board finds insufficient evidence that the claimant was able, available and actively seeking work from the week beginning May 5, 2013. There is insufficient evidence that the claimant was released by her physician for work. The hearing examiner's decision is correct in this regard.

In the appeal to the Board, the claimant attempts to withdrawal her appeal. The Board denies the withdrawal because the face of the appeal letter does not demonstrate that the claimant understands the full import of the July 12, 2013 decision. The Board, therefore, reviewed the record and issued this decision.

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 met 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 from the week beginning April 7, 2013 through the week ending May 4, 2013.

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 from the week beginning May 5, 2013. The claimant is not eligible for benefits from this week forward until she demonstrates she is in compliance with the requirements of the law.

DECISION

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 from the week beginning April 7, 2013 through the week ending May 4, 2013


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 May 5, 2013 and until claimant is meeting the requirements of the law.

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. .

The Hearing Examiner's decision is modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

VERONICA BREMERMAN

SOUTHWEST AIRLINES COMPANY

SUSAN BASS DLLR

SOUTHWEST AIRLINES COMPANY

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

VERONICA BREMERMAN

SSN #

Claimant

vs.

SOUTHWEST AIRLINES COMPANY

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: 1316476

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

July 12, 2013

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, Veronica Bremermann, filed for unemployment insurance benefits establishing a benefit year effective April 14, 2013 with a weekly benefit amount of \$430.00.

At the time Claimant filed for benefits she was on maternity leave from her employment with Southwest Airlines Company where she is employed as a flight attendant. The Claimant was pregnant and effective April 7, 2013 the Claimant was advised by her doctor that it was not safe for her to continue to fly during the late stages of her pregnancy. She requested a ground assignment from her Employer who did not provide a ground assignment and she was placed on maternity leave. The Claimant's only restrictions from her doctor were that she could not lift over fifty pounds and could not fly. While on leave the Claimant has

been seeking work as a secretary or bookkeeper. She has performed this type of work in the past and is able to perform this type of work with the restrictions imposed by her doctor.

She gave birth to a daughter on May 5, 2013. She was released by her doctor to return to her regular employment as a flight attendant effective June 11, 2013. The Employer indicated that work was available to her but that she could take additional leave if she so desired. The Claimant elected to continue to take maternity leave to care for her child.

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.

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 she is in compliance with Agency requirements. In the case at bar, that burden has been partially met.

The Claimant's testimony establishes that she was able, available and actively seeking work as a secretary or bookkeeper between the time she began her maternity leave on April 7, 2013 and the time her baby was born on May 5, 2013.

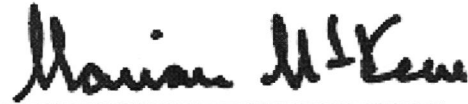
The claimant acknowledged that she has not been able, available and actively seeking work since her child was born. Thus, she has not satisfied the requirements of Title 8, Section 903 and benefits must be denied at this time.

DECISION

IT IS HELD THAT the claimant was able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed from the week beginning April 14, 2013 through May 4, 2013, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance 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.

IT IS FURTHER HELD THAT 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. The claimant is disqualified from receiving benefits for week beginning May 5, 2013 and until the claimant is fully able, available and actively seeking work.

The determination of the Claims Specialist is modified.



M McKennan, 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 July 29, 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 25 ,2013

CH/Specialist ID: WCU53

Seq No: 001

Copies mailed on July 12, 2013 to:

VERONICA BREMERMAN

SOUTHWEST AIRLINES COMPANY

LOCAL OFFICE #63

SUSAN BASS DLLR

SOUTHWEST AIRLINES COMPANY