



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

**BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201**

**(301) 383-5032**

**BOARD OF APPEALS**

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Appeals Counsel

MARK R. WOLF  
Chief Hearing Examiner

**STATE OF MARYLAND**

HARRY HUGHES  
Governor

**— DECISION —**

Decision No.: 411-BR-85

Date: June 19, 1985

Claimant: Kim E. Bentz

Appeal No.: 12980

S. S. No.:

Employer: Pleasant View Nursing Home

LO. No.: 5

Appellant: CLAIMANT

Issue: Whether the claimant was able, available and actively seeking work within the meaning of §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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF 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

July 19, 1985

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee.

The claimant, a Licensed Practical Nurse, became pregnant in approximately October of 1984. Her doctor stated that she could continue to work, but that she could not lift over 40 pounds. The employer then placed the claimant on a maternity leave of absence from October 21, 1984 until she was able to return to work after the birth of her child, an event which was expected on May 12, 1985.

The claimant then began looking for other nursing jobs which did not require lifting 40 pounds. Upon the advice of the local office of the Department of Employment and Training, the claimant also began looking for other positions, such as bank teller, sales clerk or any other position. The claimant told prospective employers that she was keeping her options open but that nursing was her field, she intended to stay in that field and would return to that field after her baby was born.

A disqualification from the receipt of unemployment benefits may not be imposed on a woman who is required to leave work on account of her pregnancy. Brown V. Percher, 560 F.2d 1001 (1981). Any claimant, however, including a woman who left work due to pregnancy, must meet the requirements of §4(c) of the law that she is able to work, available for work and actively seeking work. Bowen v. Sheraton Fountainbleu (407-BR-83). The claimant in this case was certainly actively seeking work. The only restriction upon her availability was the fact that she preferred to remain in the nursing field and intended to return to her former job when her former employer permitted her to do so.

The Board has ruled in the past that where a claimant is otherwise available for and actively seeking work, no disqualification should be imposed on the claimant based solely on the fact that the claimant has accepted a job which is to begin in the future. Anderson v. Haven Lane (1355-BR-82). In this case, the claimant has been disqualified under §4(c) of the law solely because she intends to return to her former job when permitted to do so.

Section 4(c) of the law deals only with persons filing weekly claims for unemployment benefits, all of whom are presumably unemployed through no fault of their own. It would be inconsistent with the very purpose of the Unemployment Insurance law to require a claimant to forego any hope of employment or reemployment in the future in order to qualify for benefits under §4(c) of the law. It would also be inconsistent with the purposes of the law to disqualify from the receipt of benefits anyone who has a date certain to return to work. Yet these are exactly the effects of the Appeals Referee's ruling in this case.

Section 4(c) does not mandate a disqualification of those involuntarily laid off for a specific period who are seeking to become employed for this specific period. Neither is 4(c) meant to disqualify claimants on the grounds of "unavailability" for work solely because they honestly indicate to prospective employers the realities of their employment situation.

DECISION

The claimant was available for work and actively seeking work within the meaning of §4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law, based upon availability for work as the result of the claimant's desire to return to her former position.

The decision of the Appeals Referee is reversed.

*Thomas W. Keech*

Chairman

*Gayle A. Marshall*

Associate Member

K:W

kmb

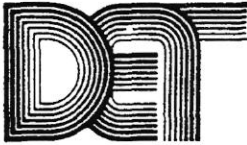
COPIES MAILED TO:

CLAIMANT

EMPLOYER

ADP

UNEMPLOYMENT INSURANCE - FREDERICK



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STATE OF MARYLAND  
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Chief Hearing Examiner

**— DECISION —**

	Date: mailed	Jan. 30, 1985
Claimant: Kim E. Bentz	Appeal No.:	12980
	S. S. No.:	
Employer: Pleasant View Nursing Home	L.O. No.:	05
	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 TO PETITION FOR REVIEW —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 Feb. 14, 1985

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present, accompanied by Husband,  
William B. Bentz

Represented by  
Juliana Lagana,  
Director of  
Nursing &  
Theodore S. Litwin,  
Automatic Data  
Processing

**FINDINGS OF FACT**

The claimant was last employed as a licensed practical nurse by Pleasant View Nursing Home on October 21, 1984. She became unemployed when she was granted maternity leave. The expected date of delivery of her child is May 12, 1985. The claimant was

put on maternity leave three days after she gave her employer notice that she was pregnant. The claimant filed her initial claim for benefits effective October 21, 1984, the same week in which she was laid off on maternity leave. The claimant is making an active search for work as a office clerk, bank teller or receptionist in a doctor's office. The claimant is looking for only temporary work and makes this point clear to her prospective employers, because she tells them that upon release from her doctor at the end of the post partum period, she will return to work as a licensed practical nurse at the Pleasant View Nursing Home. The claimant has been advised by her doctor to do no heavy lifting or bending or stooping, she has a normal pregnancy.

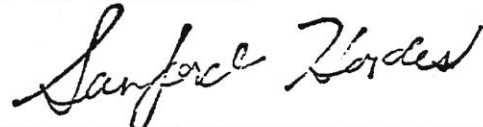
#### CONCLUSIONS OF LAW

It is concluded from the weight of the credible evidence that the claimant is not available for work and not actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. The claimant acknowledges that, in looking for work, she is telling her prospective employer that she will work for them only temporarily because she intends to return to the nursing home when she is released by her doctor at the end of her pregnancy. This constitutes placing a restriction on her availability, since she is looking only for temporary work. In 1953, the Maryland Court of Appeals ruled in Robinson vs. Employment Security Board, 202, Md. 515, 97 A.2d 300, that a claimant may not impose restrictions upon her willingness to work and still meet the availability requirements of Section 4(c) of the Law.

#### DECISION

The claimant is not available for work and is not actively seeking work within the meaning of Section 4(c) of the Law. Benefits are denied for the week beginning October 21, 1984 until such time that she meets the availability requirements of Section 4(c) of the Law.

The determination of the Claims Examiner is affirmed.



**Sanford Hordes**  
**Appeals Referee**

Date of hearing: Jan. 2, 1985

jlt

( 9103A-A. McConnell)

3. Appeal No. 12980

Copies mailed on Jan. 30, 1985 to:

Claimant

Employer

Unemployment Insurance - Frederick

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