

- DECISION -

Claimant:	Decision No.:	4369-BR-12
SHARON K BALLARD	Date:	October 03, 2012
	Appeal No.:	1216105
	S.S. No.:	
Employer:	L.O. No.:	61
,	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: November 02, 2012

REVIEW OF THE RECORD

After a review of the record, and after correcting the second sentence of the second paragraph to correctly reflect the fact that the semester ended May 10, 2012, the Board adopts the hearing examiner's modified findings of fact. However, the Board concludes that these fact warrant different conclusions of law and a reversal of the hearing examiner's 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. *Plaucher 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 her appeal, the claimant reiterates much of her testimony from the hearing. She contends, as she stated at the hearing: "If an employer gave me a job offer, I would have taken it without any hesitation. I was willing to adjust my school schedule, or drop my classes as I have done before with my previous employer."

The Board has conducted a thorough review of the evidence of record from the Lower Appeals hearing. That evidence supports the claimant's contentions. The evidence showed that the claimant was fully able to work. The evidence showed that the claimant had been, and continued to be, engaged in an active work search. The claimant was seeking employment in a variety of occupations and was willing to accept any offered work for which she was qualified. Most importantly, however, the evidence established that the claimant was available for work despite her schooling.

The claimant had worked full-time in the past, while attending school. The claimant was willing to drop classes or adjust her school schedule in favor of employment. The claimant was seeking work in fields where work is available every day of the week and at varying hours. A claimant is not required or expected to be available for work twenty-four hours each day of the week. A claimant is required to be available to work most of the days and hours which are common within the type of work being sought. Some of the jobs the claimant had sought were conducted during regular business hours and she would have had to rearrange her school schedule to accept one of those. However, some of the other jobs for which the claimant applied were conducted on weekends, evenings and even nights, all seven days of the week. It is entirely possible that the claimant could have secured full-time employment in one of these positions without having to make any changes to her school schedule.

The Board finds that the evidence establishes the claimant's compliance with the criteria enumerated in §8-903. The claimant is entitled to benefits, as of April 1, 2012, if she is otherwise qualified and 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 has met her burden of demonstrating that she was able, available, and actively seeking work, as of April 1, 2012, within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be reversed for the reasons stated herein.

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 01, 2012.

The Hearing Examiner's decision is Reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

TBW

Copies mailed to:

SHARON K. BALLARD

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHARON K BALLARD

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: 1216105

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

May 24, 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, Sharon Ballard, filed for unemployment insurance benefits establishing a benefit year effective April 1, 2012, with a weekly benefit amount of \$288.00.

The claimant was enrolled as a student at Prince George's Community College for the Spring 2012 semester. The semester ended on April 10, 2012. The claimant had the following class schedule: Sociology on Tuesdays and Thursdays from 8:00am to 9:15am, Nutrition on Tuesdays from 9:30am to 10:45am, English on Tuesdays and Thursdays from 12:30pm to 1:45pm, and Biology on Tuesdays and Thursdays from 2:30pm to 5:15pm. The claimant is seeking work as a cashier or medical assistant. The customary hours for these positions conflicted with her school schedule. The claimant is medically able to work. She has child care obligations but has child care arranged for her children. Her semester ended on

May 10, 21012, since that date she has no restriction on her availability for work. The claimant has been actively seeking work.

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 she is in compliance with Agency requirements. In the case at bar, that burden has not been partially met. The claimant maintained that she was in school but she could still get full-time hours. Unfortunately, the law is very clear on this issue that the search for work must be the primary activity in order to get benefits. Whether or not it is possible for the claimant to work around her school schedule is not really the issue. The issue is whether the claimant was fully able and available, with no restrictions, for work on all shifts for the customary hours in the job field she seeks. In this case, the claimant was not available for those hours while she was in school. Accordingly, the claimant's school attendance did impose a substantial restriction on her availability for work. Therefore, the Claimant has failed to demonstrate that she was in compliance with the requirements of Section 8-903 while she was enrolled in school. However, the claimant has demonstrated that she is able, available, and actively seeking work as of the last day of her semester, which was May 10, 2012.

Accordingly, a total disqualification is not warranted and benefits will be allowed for those weeks in which the claimant demonstrated no material restriction upon availability for work, as discussed above.

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 from the week beginning April 1, 2012, through the week ending May 12, 2012.

IT IS FURTHER HELD THAT the claimant is 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 May 13, 2012, 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.

The determination of the Claims Specialist is modified.

K. Boettger

K. Boettger, 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 June 08, 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 : May 18,2012
CH/Specialist ID: WCP10
Seq No: 001
Copies mailed on May 24, 2012 to:
SHARON K. BALLARD
LOCAL OFFICE #61
SUSAN BASS DLLR