

STATE OF MARYLAND

**DLLR**

DEPARTMENT OF LABOR, LICENSING AND REGULATION

BOARD OF APPEALS  
1100 North Eutaw Street, Room 515  
Baltimore, MD 21201  
Donna Watts-Lamont, Chairperson

**- DECISION -**

Claimant:  
TAMARA A LEWIS

Decision No.: 462-BR-11

Date: February 25, 2011

Appeal No.: 1016213

Employer:

S.S. No.:

L.O. No.: 60

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: March 28, 2011

**REVIEW ON THE RECORD**

After a review on the record, the Board makes the following findings of fact and reverses the decision of the hearing examiner:

The claimant opened her claim for unemployment insurance benefits establishing a benefit year effective February 15, 2009. The claimant qualified for a weekly benefit amount of \$99.99

Since opening her claim the claimant has been able to work, available to work and actively seeking work. The claimant has no impediments to working should she find work. The claimant's children are in daycare. The claimant is taking an online course. However, as

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MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • ALEXANDER M. SANCHEZ, SECRETARY



the course is offered online the claimant is free to work on it at any time and at her own pace. This online class is not a bar to the claimant ability to work, availability to work or her efforts to seek work.

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 09.32.06.02(E)*.

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. *Plaughner 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.

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.

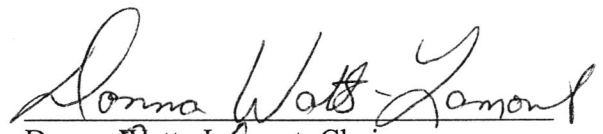
The Board finds based upon a preponderance of the credible evidence that the claimant did meet her burden of demonstrating that she was able, available, and actively seeking work within the meaning of

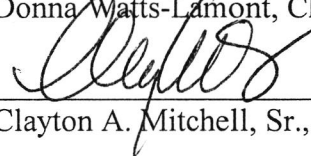
*Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be reversed for the reasons stated herein.

**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 January 30, 2010.

The Hearing Examiner's decision is reversed.

  
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Donna Watts-Lamont, Chairperson

  
\_\_\_\_\_  
Clayton A. Mitchell, Sr., Associate Member

KJK

Copies mailed to:

TAMARA A. LEWIS

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TAMARA A LEWIS

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: 1016213

Appellant: Claimant

Local Office : 60 / TOWSON CALL  
CENTER

May 21, 2010

**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 filed for unemployment insurance benefits establishing a benefit year effective February 15, 2009 with a weekly benefit amount of \$99.

Since opening her claim for benefits, the claimant has been seeking work in a variety of fields, such as customer service, housekeeping and hotel work. However, she is currently enrolled in her first training class through an internet based distance learning program sponsored by U.S. Career Assistance, which covers her school-related costs. She is busy with the program and treats it as work from 9:00 am - 4:30 pm every day. Her children are enrolled in a daycare program, which has them for twelve hours each weekday, from 6:30 - 6:30. The claimant denies any physical limitations or conditions that might interfere with working outside the home.

## 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 claimant had the burden to show, by a preponderance of the evidence, that she is in compliance with Agency requirements. In this case that burden was not met because the claimant is in class all day, which constitutes a major restriction on her availability, and is contrary to Section 8-903 of the Maryland Unemployment Insurance Law. The law requires that a claimant be able to work and available for work in order to be eligible for benefits.

## 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 24, 2010 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

*L. Brown*

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L. Brown, 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 to Petition for Review**

Any party may request a review 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 07, 2010. 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 14,2010

CH/Specialist ID: USB1M

Seq No: 002

Copies mailed on May 21, 2010 to:

TAMARA A. LEWIS

LOCAL OFFICE #60

SUSAN BASS DLLR