

- DECISION -

Claimant:
ANDY ROMAIN

Decision No.: 4626-BR-13

Date: November 13, 2013

Appeal No.: 1314678

S.S. No.:

Employer:

L.O. No.: 65

Appellant: Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: December 13, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but concludes that these facts warrant different conclusions of law and a modification 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. *Plaughter 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 disputes the hearing examiner's conclusion that the claimant failed to make an adequate work search after March 16, 2013. The claimant does not cite to the evidence of record and makes no other contentions of error. The claimant also appeals an overpayment. The issue of whether the claimant has been overpaid benefits and whether he is liable to repay any overpayment is not before the Board at this time. If the claimant has received an overpayment determination, the claimant must first appeal that issue to the Lower Appeals Division so that a hearing may be scheduled.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the record from which the Board may make a decision.

The Board has thoroughly reviewed the record from the hearing and concurs with part the hearing examiner's findings of fact and conclusions of law. The evidence established that the claimant conducted a satisfactory work search for all but one week of the period in question. However, the hearing examiner

held the claimant ineligible for that week, and into the future. The Board finds the claimant should have been ineligible for benefits for only the week beginning March 17, 2013, during which he made no job contacts.

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 within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903, for the week beginning March 17, 2013.

The claimant did satisfy his burden for all other weeks material to this decision. The decision shall be affirmed, as 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 for the week beginning March 17, 2013.

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 March 24, 2013.

The Hearing Examiner's decision is modified.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

ANDY ROMAIN

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ANDY ROMAIN

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: 1314678

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

June 20, 2013

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

FINDINGS OF FACT

The claimant, Andy Romain, filed a claim for unemployment insurance benefits, establishing a benefit year effective July 22, 2012, and a weekly benefit amount of \$265.00. The Claims Specialist denied benefits the week beginning February 24, 2013 until April 20, 2013, because the claimant failed to make an active search for work, contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Section 903.

During a work search audit pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, the claimant was asked for his job contacts during the weeks encompassing February 24, 2013 until April 20, 2013; however, the claimant was unable to provide the detailed information requested during that interview process. As a result, the Agency imposed a penalty, disqualifying the claimant from the receipt of

EUC benefits beginning February 24, 2013 until April 20, 2013. The claimant established by a preponderance of the evidence that he actively sought work up from February 24, 2013 through March 16, 2013. Beginning the week of March 17, 2013, the claimant failed to make an active search for work insofar as no job contacts were made during this week.

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.

The Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, requires Maryland Unemployment Insurance to conduct work search audits for claimant receiving Emergency Unemployment Compensation (EUC) benefits. Claimants receiving EUC are required to provide one work search contact for any week in question, and this contact will be verified with the employer. Evidence of verification may be e-mail confirmation, telephone number of the employer contacted, and/or address of the employer where the resume/application was sent.

EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, he was actively seeking work or was exempt from doing so, during the period in question, as defined by Maryland Unemployment Insurance Law. In the case at bar, the claimant met this burden in part.

The claimant submitted documentary evidence regarding his job contacts for the weeks in question. The claimant failed to make any job contacts during the week of March 17 until March 23, 2013. Accordingly, the claimant established by a preponderance of the evidence that he actively sought work up through March 16, 2013, as defined by Maryland Unemployment Insurance Law, and benefits are allowed through such date. (CL EX #1 and 2).

However, beginning the week of March 17, 2013, the claimant discontinued his job search and therefore, was not consistent in his active search for work contrary to the requirements of the law. Accordingly, benefits are denied for the week beginning March 17, 2013.

DECISION

IT IS 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 the week beginning February 24, 2013 until March 16, 2013.

IT IS HELD THAT the claimant was not able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903 during the week beginning March 17, 2013 and benefits are denied beginning that week.

The determination of the Claims Specialist is modified.

V. Nunez

V. Nunez, 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 05, 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 07, 2013

DAH/Specialist ID: USB5F

Seq No: 002

Copies mailed on June 20, 2013 to:

ANDY ROMAIN

LOCAL OFFICE #65

SUSAN BASS DLLR