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STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

- DECISION -

Claimant:
MANJULA TRAMBADIA

Decision No.: 472-BR-09

Date: February 18, 2009

Appeal No.: 0818975

Employer:
PEAK TECHNOLOGIES INC

S.S. No.:

L.O. No.: 64

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 20, 2009

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact but reaches a different conclusion of law. The Board also finds that the claimant is otherwise able to perform the essential functions of the jobs she seeks, subject to her physicians four hour per day restriction. The claimant has applied for or made at least 2 job contacts each week during her benefit period.



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 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*. 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*.

Pursuant to *Md. Code Ann., Lab. & Empl. Art., § 8-903(b)*, "The Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under subsection (a)(1)(i) of this section. The facts of this case are a case of first impression for the Board.

Disqualifying the claimant, the hearing examiner found, "[b]ut for her disability, the claimant was otherwise qualified for benefits". The Board disagrees with the hearing examiner's application of the law and finds this conclusion the antithesis of §8-903(b). The hearing examiner rests his analysis on finding that the claimant is not a "qualified individual".

"In the employment context, an otherwise qualified person is one who can perform the 'essential functions' of the job in question." See *Pandazides v. Virginia Bd. of Educ. et.al., 946 F.2d 345, 349, 57 Fair Empl. Prac. Cas. (BNA) 232, 57 Empl. Prac. Dec (CCH) P.41,027, 2 Am. Disabilities Cas. (BNA) 33 (1991)*; also see, *Huber v. Howard County, Maryland, 849 F.Supp. 407, 412 (Md. 1994)*. The Board finds no textural support in the unemployment insurance law which requires that an individual who is willing and able to work to the full extent of her disability seek traditional "full-time" work. The claimant credibly testified that she has no restrictions on her ability to perform the jobs she has been seeking subject to working no more than four hours per day because of her disability. The claimant's testimony is un rebutted.

The Board notes that the employer and the Agency, duly notified of the date, time and place of the hearing, failed to appear. The Board additionally notes that the employer did not respond to the claim's specialist's initial inquiry prior to rendering the initial determination in this case. See *Agency Exhibit 1*. Both the employer and the Agency have been afforded notice and an opportunity to be heard.

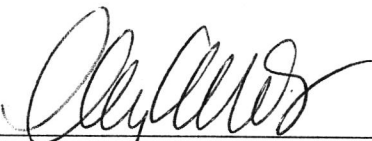
The Board finds that the hearing examiner held a fair hearing in comport with due process and *Md. Code Ann., Lab. & Empl. Art.*, §§8-508(c)(a)(1) and 8-506(a)(1) and (2) (2008 Supp.).

The Board finds that the claimant has met her burden of demonstrating that she is able, available and actively seeking work within the meaning of § 8-903. No disqualification shall be imposed based on this provision in the law. The claimant shall be eligible for benefits provided she meets the other requirements of the law. The hearing examiner's decision shall be reversed for the reasons stated herein.

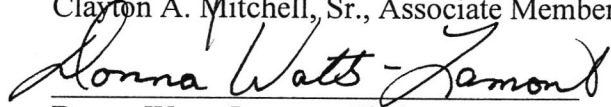
DECISION

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 July 6, 2008.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Copies mailed to:

MANJULA TRAMBADIA
PEAK TECHNOLOGIES INC
SUSAN BASS
PEAK TECHNOLOGIES INC
L. PAUL SNYDER
Susan Bass, Office of the Assistant Secretary

REMAND

UNEMPLOYMENT INSURANCE APPEALS DECISION

MANJULA TRAMBADIA

SSN #

Claimant

vs.

PEAK TECHNOLOGIES INC

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: 0818975

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

December 19, 2008

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.

PREAMBLE

This decision is pursuant to a Remand Order from the Board of Appeals of November 17, 2008.

FINDINGS OF FACT

The claimant initiated a claim for unemployment benefits effective July 6, 2008. The claimant qualifies for a weekly benefit amount of \$380.

At the time the claimant initiated a claim for unemployment benefits, she was experiencing medical issues regarding her eye. This led to her separation from employment with Peak Technologies. Specifically, the claimant is having problems with her retina, and is under the care of a physician. The claimant's doctor has advised her that she should not work more than four hours a day. The claimant does not know how long that limitation will be in effect.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & 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 require.

Md. Code Ann., Labor & Emp. Article, Section 8-903(b) states that the Secretary may not use the disability of a qualified individual with a disability as a factor in finding that an individual is not able to work under Section 8-903(a)(1)(i).

Md. Code Ann., Labor & Emp. Article, Section 8-907 provides that an individual may not be denied benefits for any week of unemployment for failure to meet the requirements of Section 8-903(a)(1) of the subtitle to be able to work, available for work, and actively seeking work if the failure results from illness or disability that occurs after the individual has registered for work, provided that no work that would have been considered suitable at the time of the initial registration is offered to the individual after the beginning of the illness or disability.

Section 8-903 requires that in order to be eligible for benefits, a claimant must be available for work. A claimant who is free to accept a full-time job during the customary hours of that job is "available" for work. In the case of Robinson v. Maryland Employment Security Board 202 Md. 515, 97A.2d 300 (1953), the claimant who had previously worked part-time in a cafeteria, would accept only part-time employment from the hours of approximately 11:00 a.m. to 3:00 p.m. The Court of Appeals reasoned that a claimant may not impose conditions and limitations on his willingness to work and still be "available" as the statute requires. The Court held that the claimant in this case restricted her hours to the point where she was not available for work.

A claimant demonstrated that, other than the restrictions placed upon her by her physician which constituted a "disability," she was otherwise able and available for full-time work. The claimant's disability resulted in her having to use a cane and avoid prolonged periods of standing. But for her disability, the claimant was otherwise qualified for benefits. Therefore, the claimant was meeting the requirements of the law. Maria F. Disalvo v. Hairstylists Mgmt Systems, Inc., 02423-BR-96 (1996).

EVALUATION OF EVIDENCE

The claimant initiated a claim for unemployment benefits effective July 6, 2008. At the time she initiated that claim the claimant had a medical condition which prevents her from working full time. The claimant had the medical situation regarding her eye prior to initiating her claim for unemployment benefits. Therefore, the claimant does not qualify for sick claims pursuant to Section 907 of the Maryland

Unemployment Insurance Law. The claimant's medical issues regarding her retina clearly constitute a disability as contemplated by Section 903 of the Maryland Unemployment Insurance Law. However, to be qualified for benefits, the individual with a disability must be a "qualified individual." Based upon the applicable precedent cited above, in Robinson and Disalvio, the claimant does not constitute a qualified individual. The claimant is limiting her availability to only part-time work pursuant to her medical restriction and is not within the requirements of the law and precedent as to Section 903 of the Maryland Unemployment Insurance Law. The applicable penalty will be imposed upon claimant.

DECISION

IT IS HELD THAT the claimant is a disabled individual pursuant to Md. Code Ann., Labor & Emp. Article, Section 8-903(b). However, the claimant is not a qualified individual under that section of law as she is not fully available for full time employment within the meaning of Section 8-903, and is ineligible to file for sick claim benefits pursuant to Section 8-907. The claimant is disqualified from receiving benefits for week beginning July 6, 2008 and until the claimant is fully able, available and actively seeking work.

The determination of the Claims Specialist is affirmed.



S B Karp, 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 January 5, 2009. 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

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : September 15,2008

TH/Specialist ID: RBA1H

Seq No: 001

Copies mailed on December 19, 2008 to:

MANJULA TRAMBADIA

PEAK TECHNOLOGIES INC

LOCAL OFFICE #64

SUSAN BASS

PEAK TECHNOLOGIES INC