

**- DECISION -**

Claimant:  
SOPHIA L DIDLEY

Decision No.: 4844-BR-12

Date: December 03, 2012

Appeal No.: 1219563

S.S. No.:

Employer:

L.O. No.: 64

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.

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**- 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: January 02, 2012

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**REVIEW OF THE RECORD**

After a review of the record, and after correcting the times of the claimant's classes on Monday and Wednesday to 8 a.m. to **10 a.m.** [emphasis added], the Board adopts the hearing examiner's modified findings of fact. However, the Board concludes that these facts 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. *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 her appeal, the claimant notes the class-time error (as corrected above by the Board). She also reiterates much of her testimony from the hearing. She contends she previously held a full-time job with the same class schedule and was available for work in her field, nursing, for the greater part of any day. The Board agrees with the claimant's contentions.

The claimant works in nursing. Nursing shifts are available at all hours of all days of the week. Many nursing shifts are flexible and the claimant had a history of full-time employment in this field, while attending school. No claimant is required to be available for work all twenty-four hours of all seven days a week. A claimant is expected to be available for work during most of the hours in which their usual occupation is performed. The claimant was available for work for a majority of the hours of all of the days of the week. There were only a few hours which would pose a conflict. The Board is satisfied that the claimant has met the requirements of §8-903.

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 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 22, 2012.

The Hearing Examiner's decision is Reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

TBW

Copies mailed to:

SOPHIA L. DIDLEY

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

SOPHIA L DIDLEY

SSN #

**Claimant**

**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: 1219563

Appellant: Claimant

Local Office : 64 / BALTOMETRO  
CALL CENTER

July 9, 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, Sophia Didley, filed a claim for unemployment insurance benefits, establishing a benefit year effective April 22, 2012, and a weekly benefit amount of \$430.00. The Claim Specialist denied benefits from April 22, 2012, until meeting the requirement of the law.

The claimant was attending school on Monday and Wednesday from 8:00 a.m. to 10:00 p.m. and on Thursday from 10:00 a.m. to 2:00 p.m. The claimant's school was held during the hours in which a substantial number of jobs in the claimant's occupation regularly work. The claimant could not quit school because of the substantial time and financial commitment she had made. The claimant completed her classes on June 15, 2012. The claimant was making two or more contacts per week for LPN positions with hospitals, assisted living facilities and long term care facilities.

## 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.

In Drew-Winfield v. Patuxent Medical Group, 87-BH-87, the Board of Appeals held "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."

## EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence; she actively sought 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.

The claimant was limiting her availability from April 22, 2012, to June 15, 2012, due to attending school. Once her classes were over, the claimant credibly testified that she was available for any shift. Therefore, claimant restricted her availability from April 22, 2012, to June 15, 2012, but was available for any shift on June 16, 2012.

Accordingly, while the claimant did not meet the requirements of Section 8-903 from April 22, 2012, to June 15, 2012, I hold the claimant met her burden in this case and adequately proved she was available for work, as of June 16, 2012, and benefits are, therefore, allowed after that date.

## 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 April 22, 2012, to June 16, 2012.

IT IS FURTHER HELD THAT the claimant is fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903 as of June 17, 2012. Benefits are allowed from June 17, 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](mailto: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.



E K Stosur, 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 July 24, 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: June 15, 2012  
AEH/Specialist ID: RBA85  
Seq No: 001  
Copies mailed on July 9, 2012 to:

SOPHIA L. DIDLEY  
LOCAL OFFICE #64