

- DECISION -

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| Claimant: | Decision No.: | 5031-BR-12 |
| NATALIE L HARRISON | Date: | October 24, 2012 |
| | Appeal No.: | 1220865 |
| Employer: | S.S. No.: | |
| | L.O. No.: | 63 |
| | 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 23, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's 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 offers no contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant does not cite to the evidence of record and makes no other contentions of error. The claimant makes her: "...request for further appeal...challenging the decision that the attending school during the day was restricting me from actively looking for work.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division 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 Board has thoroughly reviewed the record from the hearing and concurs with the hearing examiner's findings of fact.

The claimant slightly misstates the applicable law involved here. There is a three-part eligibility requirement under §8-903: 1) a claimant must be physically, mentally and emotionally able to work; 2) a claimant must not have material restrictions on her availability for full-time work in an occupation for which she has training, education or experience, and; 3) a claimant must make an active work search demonstrating an attachment to the labor market, designed to return the claimant to gainful employment.

Here, the resolution of this matter involved application of the second part of the requirement – the claimant's availability. It was clearly established that she was able to work and was engaged in an active work search at all time material to this decision. The question was whether the claimant's school attendance interfered with or occupied sufficient time to preclude her being available for appropriate full-time work. The Board does not agree with the hearing examiner's decision that it did.

The claimant has training, education, and experience in accounting and computer networking systems. Often, work in these occupations occurs during regular daytime hours. However, that is not exclusive. There are positions in both fields which offer evening, night and weekend hours. To the extent the claimant was willing to accept work during these other hours, she should be found available. The evidence from the hearing established that the claimant had the flexibility and willingness to work a variety of hours. The mere fact that the claimant attends school, even where some classes occur during daytime hours, should not automatically preclude her from establishing eligibility for unemployment benefits.


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, beginning April 8, 2012, and continuing, 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 8, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

NATALIE L. HARRISON

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

NATALIE L HARRISON

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: 1220865
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

July 09, 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, Natalie L Harrison, filed a claim for unemployment insurance benefits, establishing a benefit year effective November 27, 2011, and a weekly benefit amount of \$430.00. The Claims Specialist denied benefits the week beginning April 8, 2012, until meeting the requirements of the law, because during the week ending April 14, 2012, the claimant failed to be available, as scheduled, to present information to support she was able, available and/or actively seeking work during the week, contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Section 903.

At all times relevant to the case at bar, the claimant was both mentally and physically able to work. The claimant is actively seeking work, as defined by Maryland Unemployment Insurance Law, in the area(s) of accounting and/or computer applications.

The claimant was a full-time student from March 20, 2012 until June 4, 2012. The claimant attended school from 9:00 a.m. until 1:20 p.m. on Monday, Tuesday and Thursday, and took another class that involved a team project which required scheduling meetings with other students. The claimant obtained an associate's degree in applied science and computer networking services and as of June 5, 2012, is no longer attending school. The claimant has been looking for work, making at least 2 job contacts per week, in the field of accounting, an area in which the claimant has knowledge and experience, or a job wherein she can apply her newly acquired applied sciences/computer skills. The claimant has no other restrictions on her availability for 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.

Normally, a claimant attending day school does not meet the basic requirement of Md. Code Ann., Labor & Emp. Article, Section 8-903 that a claimant for unemployment insurance benefits must be available for work, without restriction. In the case of Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327 (1977), the U.S. Supreme Court held that "...attending school during daytime hours imposes a greater restriction upon obtaining full-time employment than does attending school at night. In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."

In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant for unemployment insurance benefits may not impose restrictions upon availability and still meet the standard of the statute. Attending day school is a material restriction upon one's availability for work and is thus disqualifying.

EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, she was able to work, available for work and actively seeking work, during the period in question, as defined by Maryland Unemployment Insurance Law. In the case at bar, the claimant met her burden in part.

In the case at bar, the claimant attended school three days a week from 9:00 a.m. until 1:20 p.m. Given the nature of the work the claimant is seeking, her class schedule conflicted with the hours customarily worked in the fields in which she seeks employment. Although the claimant is fully able to work and is actively seeking work, the self-imposed limitations on her availability to work conflict with established Maryland Unemployment Insurance Law.

Accordingly, claimant failed to meet her burden in this case for the period from April 8, 2012 until June 9, 2012. The claimant met her burden in this case for the period beginning June 10, 2012, as defined by

Maryland Unemployment Insurance Law. Therefore, benefits are allowed as of June 10, 2012, provided the claimant meets all other eligibility requirements.

DECISION

IT IS HELD THAT the claimant was 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 April 8, 2012 until June 9, 2012.

IT IS HELD THAT as of June 10, 2012, the claimant is fully 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 June 10, 2012, provided the claimant meets all other eligibility requirements. 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.

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

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: July 03, 2012
DW/Specialist ID: WCU2N
Seq No: 006
Copies mailed on July 09, 2012 to:
NATALIE L. HARRISON
LOCAL OFFICE #63
SUSAN BASS DLLR