-DECISION-

Claimant:
KEVIN L MUNDY

Employer:

,

Decision No.: 5039-BR-11

Date: September 19, 2011

Appeal No.: 1048205

S.S. No.:

L.O. No.: 60

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: October 19, 2011

REVIEW ON THE RECORD

After a review on the record, and after deleting the second paragraph, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

> The claimant made at least ten job contacts during the week in question. When filing his claim for benefits, the claimant was using a friend's cell phone. He accidently typed the number "2" indicating a "no" response to the question of whether he had sought work for the week of November 7, 2010. When the claimant contacted the Agency with questions about why his benefits had ceased, he was told only to file an appeal. The claimant was not asked to submit any other information.

The Board concludes that these facts warrant different conclusions of law and 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 09.32.06.02(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. *Plaugher 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 reiterates his testimony from the hearing. He contends that he was never asked to provide proof of his job contacts for the week in question. The claimant also contends that the list of job contacts was available to the hearing examiner, as part of the claimant's appeal, and therefore should have been considered. The Board agrees.

The claimant credibly testified that he was never asked to produce this information by the Agency after he had accidently indicated that he had made no job contacts for the week of November 7, 2010. This was a simple error by the claimant as he had, in fact, made more than the required number of job contacts for the week in question. The claimant did provide a list of contact made, during that week, with his original appeal of the benefit determination. That list, together with the claimant's testimony, is sufficient to show that he was actively seeking work within his field of experience, training and education. The Board is of the opinion that the claimant has complied with the Agency requirements concerning his work search.

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 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*. 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 November 7, 2010.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

TBW
Copies mailed to:
KEVIN L. MUNDY
SUSAN BASS DLLR
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KEVIN L MUNDY

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: 1048205
Appellant: Claimant
Local Office : 60 / TOWSON CALL CENTER

February 04, 2011

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 filed a claim for unemployment insurance benefits establishing a benefit year beginning April 11, 2010 with a weekly benefit amount of $410.

From the week beginning November 7, 2010, the claimant made no job contacts. The claimant offered several explanations, including that while submitting telecerts, he accidentally punched "2" on a borrowed cell phone when he should have punched "1," and that he never sent information to the claims center because he was not told to do so. He admitted receiving the booklet, Publication OUI 4034, *What You Should Know About Unemployment Insurance in Maryland*, but may not have read it in its entirety. After repeated efforts to reach the claims center, he spoke with someone who explained why his benefits were frozen, but gave no assistance except to recommend an appeal. He listed several employers, but had not submitted that list either because he believed he had done all he needed to do. The claimant had several interviews with a local restaurant and was awaiting a response from that employer, but that information was also not submitted to the agency.

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 Secretary shall exempt only from the "actively seeking work" eligibility condition a claimant who, at the time the claimant files an initial claim, provides a definite return-to-work date to the same employer that is within 10 weeks of the last day of employment, if the: (a) Return-to-work date is verified by that employer; and (b) Layoff is as a result of vacation, inventory, or any other purpose causing unemployment, except a labor dispute. Code of Maryland Regulations 09.32.02.07.

EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the evidence that he was in compliance with Agency requirements. In this case, that burden was not met because the claimant had no record of complying with the active search requirement of the law.

The evidence establishes that the claimant did not make an active search for work within the meaning of the Maryland Unemployment Insurance Law during the week from November 7, 2010 and thereafter, and his explanations on the reasons for his decision are too inconsistent to support his request. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that he/she seeks benefits. It is not permissible to cease looking at any time while still in claim status. In the instant case, as the claimant has failed to show that he made an active search for work, he will be disqualified from receiving benefits.

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 from the week beginning November 7, 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

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 February 22, 2011. 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: January 22, 2011
AEH/Specialist ID: UTW2P
Seq No: 002
Copies mailed on February 04, 2011 to:

KEVIN L. MUNDY
LOCAL OFFICE #60