

**- DECISION -**

Claimant:  
KATHY R JENNINGS

Decision No.: 5279-BR-13

Date: December 20, 2013

Appeal No.: 1302935

S.S. No.:

Employer:  
CHAPELWOOD ENTERPRISES LLC

L.O. No.: 63

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.

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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 20, 2014

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**REVIEW OF THE RECORD**

After a review of the record, after deleting the first paragraph, and after deleting the fifth, sixth and eighth sentences of the second paragraph, the Board adopts the Chief Hearing Examiner's modified findings of fact. The Board makes the following additional findings of fact:

The claimant reopened her claim, establishing a benefit year beginning December 11, 2012. She had a prior benefit year which began December 11, 2011. The claimant had begun attending school on a part-time basis in the summer of 2012. She advised the employer of this and asked to have her schedule adjusted to accommodate her schooling. The claimant was not able to work from 1:00 p.m. until 5:00 p.m. during the week, as that

was when her classes were scheduled. The claimant requested hours of work in the evenings, mornings and on weekends. When the claimant completed her classwork, she began an externship which occurred from 8:00 a.m. until 1:00 p.m., Monday through Friday. The claimant was available for work with the employer during the other hours of the day. The employer is a care facility and has employees working all hours of each day. The claimant had worked a variety of shifts for the employer during her long tenure there.

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 disputes the Chief Hearing Examiner's findings and conclusions. The claimant reiterates much of her testimony from the hearing. The claimant also discusses an overpayment and recoupment of overpayment. She further states she believed the employer had to approve her receipt of benefits prior to the claimant actually receiving those benefits.

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. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. 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.

The Board has thoroughly reviewed the record from the hearing, but disagrees with the Chief Hearing Examiner's decision. The evidence established that the claimant was unavailable for work for four hours of the day, Monday through Friday. The claimant was available for work evening, weekends, and the other hours she was not either attending classes or in her externship. The type of work performed by the claimant is routinely done at all hours, or during all shifts and days of the week. The claimant may have made her schooling a priority, but she did not remove herself from the labor market entirely.

The Board notes that a claimant has never been required to be available for work twenty-four hours, seven days each week. A claimant may exclude certain shifts or days from her acceptable work schedule for a variety of reasons. The question which must be answered in this sort of inquiry is whether the claimant has so restricted or limited her availability as to effectively remove her from the workforce. The Board finds that this claimant was available to perform work, for which she had training, education, and experience, for about twenty of the possible twenty-four hours each day. The evidence also demonstrated that the claimant was willing to work evenings, mornings, and weekends, around her school and externship schedules. Further, the evidence established that the type of work usually performed by the claimant can be performed during all hours of the day and all days of the week.

Because the Board is reversing the prior decision and finding the claimant eligible for benefits during the relevant time period, no overpayment will have occurred and the issue of recoupment becomes moot.

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 June 24, 2013.

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

VD/mw

Copies mailed to:

KATHY R. JENNINGS

CHAPELWOOD ENTERPRISES LLC

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

KATHY R JENNINGS

SSN #

**Claimant**

vs.

CHAPELWOOD ENTERPRISES LLC

**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: 1302935  
Appellant: Employer  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

September 20, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, JAMMIE SALERNO

**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, Kathy Jennings, filed for unemployment insurance benefits establishing a benefit year effective June 24, 2013 with a weekly benefit amount of \$151.00.

At the time she established her claim, the claimant was enrolled in a medical assistant training course. Her courses started at 1:00 p.m. on weekdays and lasted four (4) hours. In addition, the claimant was required to complete an externship in order to complete her course. The hours at the externship was scheduled from 8:00 a.m. to 1:00 p.m. Because of the time commitment to her schooling, the claimant notified her employer, Chapelwood Enterprises LLC, in late June 2012 that she would not be able to continue an

assignment that she had worked for two hours each morning. She agreed to return to work for the employer when her course work was completed in December. The claimant continued to look for work but the hours she could work were limited due to her schooling and externship. The claimant was only seeking work from 6:00 p.m. to 10:00 p.m. or on the weekends. The claimant completed her schooling in late December 2012. She was contacted by her employer in December and she agreed to take assignments after the New Year. The claimant accepted an assignment which started on January 10, 2013 and she has been working for the employer since that date.

## 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.

A claimant attending an educational institution does not normally meet the requirements of Md. Code Ann., Labor & Emp. Article, Section 8-903 which provides that a claimant for unemployment insurance benefits must be able, available and actively seeking work. School attendance normally operates as a substantial restriction upon availability for work.

However, a claimant for unemployment insurance benefits who is a student will not be disqualified from the receipt of benefits pursuant to Section 8-903 if he or she can demonstrate that he or she is genuinely attached to the work force, despite attendance at school. Student status is not disqualifying per se, but the claimant must demonstrate that he or she is primarily a worker who also goes to school, rather than a student who works. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

## EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The Claimant had the burden to show, by a preponderance of the evidence, that she is in compliance with Agency requirements. In the case at bar, that burden has not been met. The Claimant and employer testimony established that the claimant was unable to accept assignments due to her schooling and externship. The claimant notified the employer of her lack of availability for this reason. Although the claimant continued a search for other work, employment was available from this employer but for the claimant's restrictions due to her school schedule. Moreover, the claimant was unlikely to obtain other employment given the restrictions imposed due to the amount of time she had to devote to her schooling and externship. The claimant was unwilling to accept any job that conflicted with her school schedule. Accordingly, the claimant's school attendance did impose a substantial restriction on her availability for work. Therefore, the Claimant has failed to demonstrate that she was primarily a worker and thus in compliance with the requirements of Section 8-903 until she completed her courses and externship. Therefore benefits must be denied from the period in June when the claimant refused assignments until after

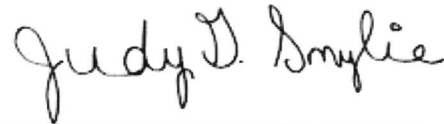
New Years when she agreed to accept work.

### 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 June 24, 2012 through the week ending January 5, 2013.

IT IS FURTHER HELD THAT the claimant was 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 January 6, 2013 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



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J G Smylie, 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 of the Lower Appeals Division. Any party who disagrees with this decision 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 October 07, 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 : September 10,2013  
JGS/dah/Specialist ID: WCU60  
Seq No: 001  
Copies mailed on September 20, 2013 to:

KATHY R. JENNINGS  
CHAPELWOOD ENTERPRISES LLC  
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