

- DECISION -

Claimant:	Decision No.:	5283-BR-12
AMALIA J PUNZO	Date:	January 16, 2013
	Appeal No.:	1203570
Employer:	S.S. No.:	
	L.O. No.:	65
	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: February 15, 2013

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 modification 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. *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 her appeal, the claimant reiterates her testimony from the hearing. The Board agrees with the claimant's contention that she was able to work, available for work, and actively seeking work as of the date of her doctor's release, January 9, 2012. The claimant's eligibility for benefits should begin on the first day of that week, which was January 8, 2012. The hearing examiner's decision is modified to reflect this correction.

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.

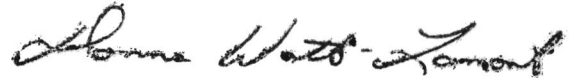
The Board finds based upon a preponderance of the credible evidence that the claimant has met her burden of demonstrating that she was able, available, and actively seeking work, during the week beginning January 8, 2012, within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be affirmed, as modified, for the reasons stated herein and in the hearing examiner's decision.

DECISION

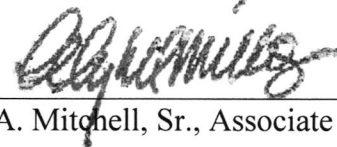
The claimant is not able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. The claimant is disqualified from receiving benefits from the week beginning January 01, 2012 thru January 07, 2012.

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 January 08, 2012.

The Hearing Examiner's decision is Modified.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

TBW

Copies mailed to:

AMALIA J. PUNZO

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE REMAND APPEALS DECISION

AMALIA J PUNZO

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: 1203570
Appellant: Claimant
Local Office : 65 / SALISBURY
CLAIM CENTER

August 23, 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.

PREAMBLE

On February 24, 2012, pursuant to a hearing held on February 10, 2012, Hearing Examiner V. Nunez issued an Unemployment Insurance Appeals Decision. A timely appeal to the Board of Appeals was filed, which in turn issued a Remand Order on August 6, 2012 directing Hearing Examiner V. Nunez to consider the claimant's medical documents and to issue a new decision based on all the evidence in the record. In accordance with the Board of Appeals' Remand Order, the following decision is issued.

FINDINGS OF FACT

The claimant, Amalia J Punzo, filed a claim for unemployment insurance benefits, establishing a benefit year effective December 18, 2011, and a weekly benefit amount of \$430.00. The Claims Specialist denied benefits the week beginning January 1, 2012, until meeting the requirements of the law, because during the week ending January 7, 2012, the claimant had a medical condition or illness which made her unavailable from work, contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Section 903.

The claimant underwent a lumpectomy on January 5, 2012. The claimant was released to return to work, full-time without restrictions, by her physician effective January 9, 2012 (CL EX. #1).

The claimant has access to reliable transportation. The claimant is making at least two (2) job contacts per week in the areas of hospital administration; an area of employment in which the claimant has prior experience and/or skills and abilities.

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 Brooks, 12-BR-85, the Board of Appeals held "A claimant who has been released to return to full-time work, without restrictions, is able to work within the meaning of Section 8-903 from the date of the release."

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 this burden in part.

The claimant underwent surgery on January 5, 2012. The claimant was released to return to work, full-time without restrictions, by her physician effective January 9, 2012 (CL EX. #1). The claimant has access to reliable transportation. The claimant is making at least two (2) job contacts per week in the areas of hospital administration; an area of employment in which the claimant has prior experience and/or skills and abilities.

Accordingly, the claimant failed to meet her burden with respect to the time period beginning the week of January 1, 2012 until January 14, 2012. The claimant met her burden in this case, and was able and available for work, beginning January 15, 2012, as defined by Maryland Unemployment Insurance Law and, provided the claimant meets all other eligibility requirements, and benefits are allowed beginning January 15, 2012.

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 during the week of January 1, 2012 until January 14, 2012.

IT IS HELD THAT the claimant was able and available work, actively seeking work beginning the week of January 15, 2012, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed beginning January 15, 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 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 September 07, 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: February 10, 2012
DW/Specialist ID: USB2P
Seq No: 003
Copies mailed on August 23, 2012 to:
AMALIA J. PUNZO
LOCAL OFFICE #65
SUSAN BASS DLLR