
DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaeter, Governor
J. Randall Evans, Secretary

— DECISION —

	Decision No.:	534-BR-87
	Date:	July 29, 1987
Claimant: Patricia White	Appeal No.:	87-UCF-38
	S. S. No.:	
Employer: United States Postal Serv.	L.O. No.:	8
	Appellant:	CLAIMANT

Issue: Whether the claimant is able to work, available for work and actively seeking work within the meaning of Section 4(c) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

August 28, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant was placed on an involuntary leave of absence without pay by her employer on December 8, 1986. When the claimant applied for unemployment benefits, no determination was made on the separation issue (the reason the claimant was no longer employed). Rather, a determination was made that the claimant was not sufficiently able to work and available to work, under Section 4(c) of the law. The claimant appealed this determination and, after a full hearing, the Hearing Examiner affirmed the decision of the Claims Examiner that the claimant was not able to work and available for work under Section 4(c) of the law.

That decision was clearly wrong and will be reversed. The claimant's official job description required the employee to be in good physical condition, capable of arduous labor, lifting parcels up to 70 pounds. In reality, the job rarely required lifting over 20 pounds. The working hours were nine and one-half hours per day, five days per week.

At the time the claimant first filed claims for benefits, she was capable of performing the routine duties of her job, but only for 8 hours a day. She was not capable of performing all of the duties of her job description. She was capable of performing light duty on a full-time basis. She applied for various types of light work at fast food stores, department stores and other employers. She contacted two employers in person per week. She told one prospective employer that she was planning to return to the Postal Service; others she did not. She had a car and drove to these appointments. She was willing to accept a salary substantially less than what she had previously made, as she intended to return to the Postal Service. Her baby was born on January 7, 1987, and she was disabled from approximately that date until the end of February. She filed "sick claims" during this time. She had a babysitter available so that she could accept work.

CONCLUSIONS OF LAW

After December 8, 1986, the claimant was performing no services for which wages were payable under Section 20(1) of the law. She was therefore unemployed. On December 8, 1986, the claimant either "left work voluntarily" within the meaning of Section 6(a), or she was suspended by her employer within the meaning of Section 6(b) or 6(c) of the law (although not necessarily on account of misconduct within the meaning of those sections). The separation issue should have been determined. The Board, however, cannot decide the separation issue now, as neither party was given notice that it was an issue in the case.

With respect to Section 4(c) of the law, the Board disagrees with and reverses the conclusions of the Hearing Examiner. The Hearing Examiner found that the claimant's "desire to return to her employment as a letter carrier for the United States Postal Service" rendered her unavailable for work under Section 4(c) of the law. There is no basis in the law for this conclusion. In Bent v. Pleasant View Nursing Home (411-BR-85), the Board held that a claimant on an involuntary leave of absence, who looked for work and told prospective employers of her intent to return to work at her former job when allowed to do so, was meeting the requirements of the law. The Board held that it was inconsistent with the purpose of the Unemployment Insurance Law to require a claimant to give up any hope of returning to her former work in order to be eligible for unemployment benefits. The same reasoning applies here. The desire to return to one's former job does not make one unavailable for work.

A more significant question is whether the claimant was able to work. Although officially restricted to light duty, the claimant could perform all of the duties of her former job, including some more arduous duties, for up to 40 hours per week. In addition, she was clearly capable of performing those jobs for which she was applying. Although the evidence is less than fully developed on this issue, it is apparent that the claimant was capable of performing a wide range of jobs which are commonly available in the economy. After she became totally unable to work, of course, she was eligible to file sick claims.

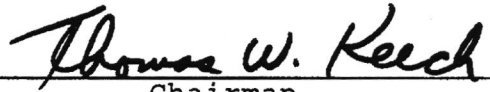
The obvious problem in this case is that it is hard to believe that the claimant didn't have any other alternative than to go on an unpaid leave of absence on December 8, 1986. If the claimant had such an alternative (such as the use of sick leave or vacation) she might possibly be disqualified under Section 6(a) of the law. But the parties were not notified that this was an issue, and the evidence is too vague to make a decision on this record. These considerations are irrelevant, however, to a decision under Section 4(c) of the law.

DECISION

The claimant was meeting the requirements of Section 4(c) of the law during the period in question.

The decision of the Hearing Examiner is reversed.

This decision does not preclude the local office from making any additional determination under Section 6(a), 6(b) or 6(c) of the law.


Chairman


Associate Member

K:W

kbm

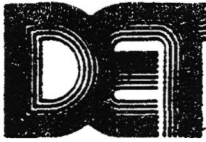
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CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - ANNAPOLIS



DEPARTMENT OF EMPLOYMENT AND TRAINING

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BALTIMORE, MARYLAND 21201**

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BOARD OF APPEALS

**THOMAS W. KEECH
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HAZEL A. WARNICK

Associate Member

**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

STATE OF MARYLAND

William Donald Schaefer
Governor

— DECISION —

Date: Mailed: 5/5/87

Claimant: Patricia White

Appeal No.: 87/UCF-38

S. S. No.:

Employer: United States Postal Service L.O.No: 08

Appellant: Claimant

Issue: Whether the claimant was able to work, available for work and actively seeking work under Section 4 (c) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION. ROOM 515, 1100 NORTH EUTAW STREET. BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON **May 20, 1987**

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

**Represented by John
Schmidt, Branch
Manager**

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective December 14, 1986.

The claimant was employed by the United States Postal Service, from December, 1979 until on or about December 8, 1986, her last job classification as a rural letter carrier at a yearly salary of \$31,000.00.

The claimant, on December 8, 1986, was placed on a leave without pay status as she was in her ninth month of pregnancy. This status arose after the employer insisted to the claimant that proper medical documentation be presented to them in order for her to return to work after she reported a Workmen's Compensation injury while in approximately her eighth month of pregnancy.

The claimant was eligible to receive vacation pay or sick leave while off from her job. The claimant's treating physician certified that the claimant could not do all her assigned tasks and restricted her to light duty only on November 25, 1986. The claimant gave birth to her child on January 18, 1987. She returned to work on March 30, 1987.

The claimant was in need of money during her pregnancy and subsequent delivery and recovery period. She filed claims for unemployment insurance benefits for this reason. The claimant insists that she met with two prospective employers at least two times during each week of her unemployment. She admits that all places where she tried to obtain employment did not meet wages comparable to her yearly earnings of approximately \$31,000.00.

CONCLUSIONS OF LAW

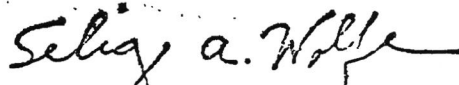
It is apparent that the claimant was restricting her availability for work due to her desire to return to her employment as a rural letter carrier for the United States Postal Service. She failed to use any vacation or sick leave that was available to her when she was placed on a leave without pay status while in her ninth month of pregnancy.

Under the above facts, the determination of the Claims Examiner that the claimant was not meeting the able, available and actively seeking provisions of Section 4 (c) of the Maryland Unemployment Insurance Law simultaneously, is affirmed.

DECISION

The claimant was not meeting the requirements of Section 4 (c) of the Law. Benefits are denied for the week beginning December 14, 1986 indefinitely, until she can demonstrate she can meet the able, available and actively seeking provisions of Section 4 (c) of the Law.

The determination of the Claims Examiner is affirmed:



Selig A. Wolfe
HEARING EXAMINER

DATE OF HEARING - 4/15/87
cd
2210/Simms

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Claimant
Employer
Unemployment Insurance - Annapolis (Pre-MABS)