

- DECISION -

Claimant:
VALERIE OWENS

Decision No.: 5675-BR-12

Date: November 28, 2012

Appeal No.: 1228199

S.S. No.:

Employer:

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: December 28, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision

The claimant is looking for work as a certified nursing assistant where she has prior experience. The normal hours in this field are 24 hours per day, seven days per week, three shifts per day. The claimant attends school where she is seeking certification in medical coding. Her class schedule is Monday through Friday from 8:00 am to 12:30 pm. After her classes are completed, the claimant has an unpaid internship of 370

hours. The claimant has flexibility in her class schedule. If a conflict develops between work hours and class hours, the claimant can take her classes at night or on the weekends.

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, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. 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.

While § 8-903 does not demand that a claimant look for work 24 hours per day, seven days per week, looking for work must be a claimant's primary activity. When school studies are the claimant's primary focus and interfere with the primary activity of seeking work and negatively affect a claimant's "ability and availability" to accept all appropriate employment offers, the claimant does not meet the eligibility requirements of § 8-903. See, e.g., *In re: Poole, 145-BH-84*.

A claimant whose school schedule does not materially affect his job search, on the other hand, may be able and available for work within the meaning of § 8-903. See, e.g., *In re: Clasing, 95-BH-90* (the claimant's attendance two hours per week in an educational program did not interfere with his ability to work or with his work search). There is no reason to disqualify a claimant under the availability provisions when his part-time classes have been arranged to be flexible enough to change to accommodate any work schedule. *In re: Mallet, 1132-BR-92*. In addition, a claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. *Drew-Winfield v. Patuxent Medical Group, 87-BH-87*.

The weight of the credible evidence established that the claimant is able, available, and actively seeking work. The claimant's school attendance has the flexibility to accommodate job requirements.

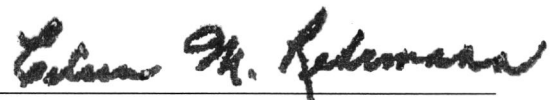
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant meet 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 *Maryland Annotated, Labor & Employment Article, §8-903*. The decision of the hearing examiner shall be reversed for the reasons stated.

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 February 26, 2012.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

VALERIE OWENS

SUSAN BASS DLLR

FERDINAND A. JOHNSON PARALEGAL

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

VALERIE OWENS

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: 1228199

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

September 10, 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, Valerie Owens, filed for unemployment insurance benefits establishing a benefit year effective October 16, 2011 with a weekly benefit amount of \$354.

The claimant attends American Career Institute in medical coding. Classes began on February 26, 2012 and end on September 19, 2012 with an unpaid internship following requiring about 370 hours. Classes are held Mondays through Fridays from 8am to 12:30pm. If work is offered on shifts which would conflict with scheduled classes, Claimant can alter the school schedule to accommodate those hours. When applying for work, Claimant lists availability from 3pm to 11pm. The claimant is looking for work as a nursing assistant where she has prior work experience. The normal hours in this field are 24 hours per day, seven days per week.

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.

A claimant who, although attending school, continues to look for full-time work and would adjust her school schedule or give up school upon receiving permanent full-time work is able, available and actively seeking work. 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 compliance with Agency requirements by a preponderance of the evidence. In the case at bar, that burden has not been met. The claimant's testimony established that school attendance acts as a substantial restriction since Claimant only lists availability when applying for work from 3pm to 11pm but is looking for work in her field of experience where the normal hours available are 24 hours per day, seven days per week Accordingly, the claimant has a substantial restriction on her availability for work and a disqualification is therefore required under Md. Code Ann., Labor of Emp. Article, Section 8-903.

DECISION

IT IS HELD THAT the claimant is 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 February 26, 2012, and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



C R Morrison, 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 September 25, 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 : September 04,2012
TH/Specialist ID: WCU1Q
Seq No: 006
Copies mailed on September 10, 2012 to:

VALERIE OWENS
LOCAL OFFICE #63
SUSAN BASS DLLR