

- DECISION -

Claimant:
TONYA D MOULDEN

Decision No.: 5722-BR-11

Date: October 14, 2011

Appeal No.: 1120960

Employer:
UNITED IN ACTION LLC

S.S. No.:

L.O. No.: 60

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: November 14, 2011

REVIEW ON THE RECORD

After a review on the record, the Board makes the following findings of facts and conclusions of law. The decision of the hearing examiner is reversed.

Since opening her claim, the claimant has been seeking work as a caregiver or cashier. The hours for these positions are varied. The claimant has applied for day shift positions because her child care is more easily available during the day. However, the claimant has not restricted her search to day time hours because she has alternative child care for other time periods. She has merely preferred positions with day time hours.

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.

A claimant's three days of unavailability for work over a four-week period does not establish that she didn't meet the requirements of Section 8-903. *Marsch, 554-BR-88*.

The Board has ruled that where there were only a few hours per week during one evening when the claimant was not available for work, and where his work history shows in general an ability to conform to the requirements of a normal work day and also attend school on a flexible, part-time schedule, the claimant was available for work under Section 8-903. *Dawson v. Bayliner Marine Corporation, 360-BR-90*.

It is inaccurate to say that a claimant must be willing to work any and all shifts. The relevant question is whether a claimant is reasonably available for work to the extent that a person actually desiring to work

and making it the highest priority in his or her life would be. *Harwell, 1861-BR-92*.

In the present case, the claimant has been able to work, and actively seeking work. The only issue that the claimant was purported to have was that she had child care issues for one day because her child care facility was closed due to illness. This was the only day that the claimant was not available because of a child care issue. Based on the Board's precedent in *Marsch*, the claimant's one day of being unavailable due to child care issues does not preclude the claimant's availability.

The claimant is applying for employment for the day shift and during the week; however she is willing to take an evening or weekend shift if it becomes available. The claimant has a preference of weekly day hours, but she is available for all other times. She has backup child care for those times.

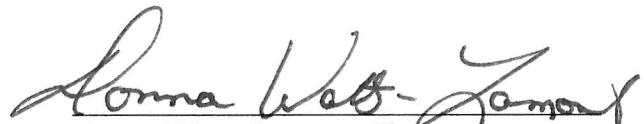
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

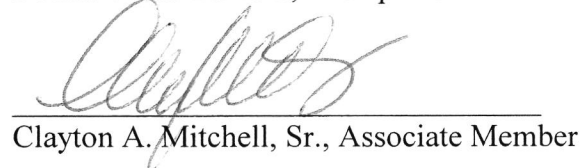
The Board finds based upon a preponderance of the credible evidence that the claimant met her burden of demonstrating that she was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd., 202 Md. 515 (1953)* and §8-903. The decision shall be reversed for the reasons 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 13, 2010.

The Hearing Examiner's decision is reversed.


Donna Watts-Lamont, Chairperson


Clayton A. Mitchell, Sr., Associate Member

RD/mr

Copies mailed to:

TONYA D. MOULDEN
UNITED IN ACTION LLC
SUSAN BASS DLLR
UNITED IN ACTION LLC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TONYA D MOULDEN

SSN #

Claimant

vs.

UNITED IN ACTION 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: 1120960

Appellant: Claimant

Local Office : 60 / LARGO

July 18, 2011

For the Claimant: PRESENT, MARIE PLACIO

For the Employer: PRESENT, BONNIE WARRINGTON

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 (Tonya Moulden) filed for unemployment insurance benefits establishing a benefit year effective June 13, 2010 with a weekly benefit amount of \$190.00.

Since opening her claim for benefits, the Claimant has been seeking work as a Caregiver or Cashier, for which the customary hours of employment are varied. With respect to whether the Claimant has any restrictions on her availability to perform work, since the week beginning June 13, 2010, the Claimant has restricted her availability and work search for jobs that are only available during the day to accommodate her child care concerns.

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.

EVALUATION OF EVIDENCE

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 candidly admitted that her availability for work is restricted to day time hours because of her lack of child care during any other work hours. The Claimant has further limited her work search for jobs that are available solely during the day time hours. Accordingly, the evidence failed to establish that the Claimant is fully available for work and a disqualification will be imposed.

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 June 13, 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 Williamson

L Williamson, 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 August 02, 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: June 24, 2011
BLP/Specialist ID: RWD3D
Seq No: 002
Copies mailed on July 18, 2011 to:

TONYA D. MOULDEN
UNITED IN ACTION LLC
LOCAL OFFICE #60
SUSAN BASS DLLR