

- DECISION -

Claimant:	Decision No.:	6115-BR-12
ANTOINETTE C MBARGA	Date:	December 21, 2012
	Appeal No.:	1221380
	S.S. No.:	
Employer:	L.O. No.:	61
,	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: January 21, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact, except for the last sentence. The Board makes the following findings of fact and reverses the hearing examiner's decision.

The Claimant has been actively seeking work. *Claimant's Exhibit B1.*

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. *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.

Along with her letter of appeal to the Board, the claimant included 29 pages documenting her efforts to obtain employment. The Board has entered those documents into the record as *Claimant's Exhibit B1*.

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 did 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 §8-903. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

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 May 27, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

ANTOINETTE C. MBARGA

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ANTOINETTE C MBARGA

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: 1221380

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

July 30, 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, Antoinette Mbarga, filed for unemployment insurance benefits establishing a benefit year effective May 27, 2012 with a weekly benefit amount of \$429.00.

The claimant is currently enrolled as a student at Eastern University. The claimant's program began on May 28, 2012. The claimant's program consists primarily of online classes and the claimant is not typically required to log in for class at any specific time. Occasionally a professor may hold a webinar which the claimant would need to log into at a specific time, but professors will ask the students which days they have conflicts before scheduling the webinar. Further, if a webinar must be scheduled on a day that the claimant has to work, the claimant may arrange to meet with the professor through the Blackboard system. The

claimant's program also has a residency component which requires that the claimant live on a college campus for three weeks. The claimant's residency began on July 14, 2012 and ends on August 2, 2012. During the residency, the claimant's program runs from 8:00 a.m. to 4:00 p.m. If the claimant were to obtain employment which conflicted with the residency program, the claimant would be willing and able to delay her residency and continue the residency next year.

Since opening her claim for benefits, the claimant has sought work a variety of administrative positions and positions with temporary agencies. The customary hours of employment for the majority of the positions the claimant seeks is 24 hours per day, 7 days per week. The claimant is available to work any shift and she applies for all shifts. The claimant is able to perform the type of work that she seeks. Since May 27, 2012, the claimant has made an unknown number of job contacts.

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, 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. Although the claimant is able and available to work, the claimant has failed to demonstrate that she has been actively seeking work. The claimant's credible and compelling testimony established that her school attendance does not act as a

restriction since her online courses allow her flexibility in reviewing the materials and attending webinars, and she is able to postpone her residency if necessary. The claimant also credibly testified that she is able to perform the type of work she seeks. However, the claimant failed to present sufficient evidence of her job contacts. Instead of providing a list of the job contacts which she has made, the claimant provided a list of three professional references. Without specific information as to what jobs the claimant applied for and when she applied for them, it cannot be determined that she has been actively seeking work at any time since opening her claim for benefits. Therefore, the claimant has failed to demonstrate that she is in full compliance with the requirements of Section 8-903 and benefits must be denied at this time.

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 from the week beginning May 27, 2012 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

J. Nappier, Esq.

J. Nappier, 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 August 14, 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 : July 14,2012
TH/Specialist ID: WCP3B
Seq No: 001
Copies mailed on July 30, 2012 to:

ANTOINETTE C. MBARGA
LOCAL OFFICE #61
SUSAN BASS DLLR