

- DECISION -

Claimant:
AMBER M MCCULLEY

Decision No.: 682-BR-14

Date: March 12, 2014

Appeal No.: 1309517

Employer:
WONDER BOOK & VIDEO INC

S.S. No.:

L.O. No.: 63

Appellant: CLAIMANT - REMAND FROM
COURT

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: April 11, 2014

REVIEW OF THE RECORD

Pursuant to the Order of the Circuit Court for Washington County and after a review of the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant filed for unemployment insurance benefits for the week beginning February 17, 2013 after being laid off from her full-time job as an office manager with Bartlett Roofing. The claimant also had a part-time retail job with Wonder Books and Video. In December 2012, the claimant took a medical leave of absence from her part-time retail job. The part-time job required that the claimant stand for extended periods of time which was

medically diagnosed as giving her sciatic nerve pain. The claimant, however, continued to work at her full-time job without medical restriction until she was separated from employment.

The claimant was not medically restricted from working at the time she filed for benefits and was never fully restricted from working in her regular field of employment. The claimant made an active search for work and her ability to seek and accept suitable work was not otherwise restricted.

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. *Plaughner 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 the instant case, the hearing examiner erred by informing the claimant that the law requires she provide medical documentation to support her un-contradicted testimony. *See Blue, 1571-BR-93* (a doctor's note may be strong evidence of ability to work, but the presence or absence of a doctor's note does not absolve the fact finder from making a judgment on whether the claimant is meeting the requirements of *Section 8-903*). The weight of the credible evidences supports a finding that the claimant was never fully restricted from working in her regular field of employment. There is insufficient evidence that the claimant was medically restricted from work at the time she filed for benefits.

The employer and the Agency, duly notified of the date, time and place of the hearing, failed to appear. The Board finds the claimant's testimony credible.

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 hearing examiner's decision shall be reversed for the reasons stated herein.

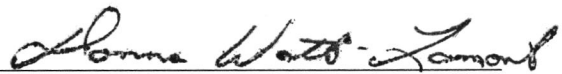
DECISION

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 February 17, 2013.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

AMBER M. MCCULLEY

WONDER BOOK & VIDEO INC

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AMBER M MCCULLEY

SSN #

Claimant

vs.

WONDER BOOK & VIDEO INC

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: 1309517

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

April 26, 2013

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, Amber M. McCulley, filed for unemployment insurance benefits establishing a benefit year effective February 17, 2013 with a weekly benefit amount of \$292.00 plus dependent allowance.

The claimant had a full time job with Bartlett Roofing as an office manager working Mondays through Fridays from 8:00 am to 5:00 pm. She worked weekends in a retail store, Wonder Book and Video, Inc. The store had usual retail hours of seven (7) days per week from 10:00 am to 10:00 pm. The claimant is pregnant and her physician told her that she should not stand for long hours or lift heavy objects because she was suffering a bout of sciatica, a recurring medical condition. The claimant did not produce medical evidence as requested that her physician lifted the restrictions imposed in December 2012.

Since opening her claim for benefits, the claimant has been seeking work as in the clerical and retail fields, both full and part time. The claimant is not attending school, is not caring for elderly or sick relatives and has day care in place in the event she returns to work. She has made two (2) job contacts per week as required and has adequate transportation to get to and from work.

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 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. The claimant left her part time job because she had a bout with sciatica and her physician recommended that she limit her standing and lifting. She stated at the hearing that she no longer has back and leg pain, but produced no medical certification that her physician had lifted the limitations imposed in December. Accordingly, a disqualification is warranted and benefits will not be allowed for those weeks in which the claimant demonstrated a material restriction upon availability for work, as discussed above.

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 17, 2013 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

B. Taylor

B. Taylor, 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 May 13, 2013. 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: April 18, 2013
CH/Specialist ID: WCU4C
Seq No: 002
Copies mailed on April 26, 2013 to:
AMBER M. MCCULLEY
WONDER BOOK & VIDEO INC
LOCAL OFFICE #63
SUSAN BASS DLLR