

- DECISION -

Claimant:
RYLINDA M RHODES

Decision No.: 709-BR-13

Date: February 28, 2013

Appeal No.: 1232126

S.S. No.:

Employer:

L.O. No.: 65

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: April 1, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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. *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.

In her appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant does not cite to the evidence of record and makes no other contentions of error. The claimant asserts that she faxed copies of her job contacts, for the weeks in question, to the hearing examiner as allowed by the hearing examiner. The claimant includes a fax confirmation sheet and additional copies of these contacts. Copies of these documents are not contained within the Lower Appeals file and it does not appear that the hearing examiner received or considered them in rendering her decision.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter.

The Board has thoroughly reviewed the record from the hearing. The Board does not agree with the hearing examiner's decision, however.

The original benefits determination, from which the claimant appealed, held her to be ineligible for benefits due to her attendance at school. The claimant came to the hearing prepared to present evidence on that issue. The hearing examiner expanded the scope of the hearing to cover the claimant's job search and required the claimant to submit written documentation in support of her testimony. The Board finds that the hearing exceeded the scope of the notice and, therefore, was violative of the claimant's due process rights.

The Board notes that the Notice of Hearing does state that, included in the issue, is the question of whether the claimant is actively seeking work within the meaning of §8-903. Technically the claimant was on notice that her work search could be an issue. However, the Board does not find technical notice to be the same as actual or effective notice. Given that the benefit determination concerned only the claimant's school attendance and her availability as a result of her school attendance, the claimant was not actually apprised that her work search would be called into question. The claimant did not have a fair opportunity to be prepared to answer the hearing examiner's questions in that regard. Further, the claimant did submit, as she was allowed to do, copies of her job contacts. Those were not, apparently, received or considered by the hearing examiner prior to the issuance of the decision.

The Board has reviewed this matter under the limited scope of whether the claimant was available for work due to her school schedule. The competent evidence in that regard establishes that the claimant had not restricted her availability to a level which would cause her to be ineligible for benefits. The claimant's classes were in the evenings and on weekends. The claimant was seeking several different types of work in which position are available all hours of all days. No claimant is required to be available for work all twenty-four hours of all seven days each week. The claimant was available for work for which she had some training or experience during the majority of the hours of the majority of days. The Board is satisfied that the claimant was available as required under §8-903.

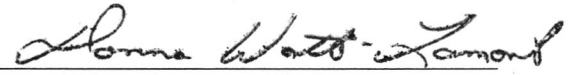
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based upon a preponderance of the credible evidence that the claimant has 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 August 26, 2012.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

RYLINDA M. RHODES

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

RYLINDA M RHODES

SSN #

vs.

Claimant

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: 1232126

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

October 22, 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, Rylinda M. Rhodes, filed for unemployment insurance benefits establishing a benefit year effective August 12, 2012, with a weekly benefit amount of \$305.00.

The claimant has been enrolled as a student at Trinity University since August 27, 2012. The claimant's classes were initially held on Monday from 6:30 p.m. to 9:30 p.m., Wednesday from 6:30 p.m. to 10:00 p.m., and Saturday from 9:30 p.m. to 12:00 pm. Since the week of September 9, 2012, the claimant's classes have been held on Saturday from 9:00 a.m. to 4:00 p.m. The claimant is seeking customer service and call center work, for which the customary hours of employment are 5:00 a.m. to midnight, seven days per week. The claimant has also been seeking work as a dispatcher, for which the customary hours of employment are twenty-four hours per day, seven days per week. The claimant is physically able to perform the type of work she seeks. The claimant is willing to drop her classes if work is offered to her that

conflicts with her class schedule.

Although the claimant has a minor child, the claimant's adult child is able to care for the claimant's minor child. In addition, once the claimant is employed and working at least twenty hours per week, the claimant will qualify for childcare vouchers. Prior to September 4, 2012, the claimant was available to work from 6:00 a.m. to 6:00 p.m. The claimant is now willing to make herself available to work any shift. The claimant has made an unknown number of job contacts since August 26, 2012.

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's credible testimony indicates that the claimant has been able to work since opening her claim for benefits and that she has been fully available to work since September 4, 2012. However, the claimant failed to provide any credible evidence of the job contacts that she has made since August 26, 2012. Therefore, it cannot be determined that she has made an active search for work at any time since August 26, 2012. Thus the claimant has not shown that she has satisfied the requirements of Title 8, Section 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 for the week beginning August 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.

J Nappier

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 November 07, 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: October 09, 2012
BLP/Specialist ID: USB2D
Seq No: 004
Copies mailed on October 22, 2012 to:

RYLINDA M. RHODES
LOCAL OFFICE #65
SUSAN BASS DLLR