

- DECISION -

Claimant:
SHRANNON T HEMPHILL

Decision No.: 711-BR-12

Date: April 18, 2012

Appeal No.: 1135740

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: May 17, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant was seeking work in a variety of occupations, including retail and general labor. The claimant did not want to drop her evening classes. She hoped that if she were offered a job which conflicted, her potential employer would be willing to work with her on arranging a schedule which would meet her educational needs.

The Board concludes that these supplemented 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. *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.

In her appeal, the claimant reiterates her testimony from the hearing. The claimant contends that she has learned, since the hearing, her school schedule can be rearranged. She contends nothing is "...interfering with me working day or night." The claimant also contends she has a financial need for benefits.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board has conducted such a review and finds that the hearing examiner held the claimant to a standard of availability which was too stringent. The claimant was only, at the time of the hearing, restricting her availability to

exclude the time of 6:00 p.m., to 11:00 p.m., Monday through Thursday. The claimant admitted an unwillingness to drop her classes to accommodate an employment offer. However, the Board does not believe that a claimant must be willing to accept work at any and all hours of the day to establish her availability. It is not unreasonable for a claimant to have some restriction upon the hours she is willing to work. Here, the claimant's restriction was minimal, particularly in light of the types of work the claimant was seeking.

The evidence shows that the claimant was seeking various types of employment for which there are historically multiple work shifts. The claimant was not seeking work in occupations for which the primary duties were performed during hours she was not available because of her class schedule. The Board does not find that the claimant's exclusion of evening hours, four days per week, was a material restriction on her availability.

As to the claimant's financial need, the Board notes that benefits are not awarded on this basis. Benefits are only paid to a claimant who is eligible and qualified. In this case, the Board finds the claimant eligible, based upon her availability. The claimant is entitled to benefits if she is qualified and otherwise eligible.

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 September 12, 2011, if the claimant is otherwise qualified and otherwise eligible.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

SHRANNON T. HEMPHILL

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHRANNON T HEMPHILL

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: 1135740
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

November 02, 2011

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, Shrannon Hemphill, filed for unemployment benefits during the week beginning September 12, 2011. Since filing for benefits the claimant has made at least two job contacts each week. The claimant is currently attending school at the Fortis Institute. The claimant attends classes from Monday through Thursday from 6PM through 11PM and cannot work on those days. When the current semester ends, a new one will begin. The claimant is unwilling to drop her classes if they conflict with a potential job offer.

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.

Normally, a claimant attending day school does not meet the basic requirement of Md. Code Ann., Labor & Emp. Article, Section 8-903 that a claimant for unemployment insurance benefits must be available for work, without restriction. In the case of Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327 (1977), the U.S. Supreme Court held that "...attending school during daytime hours imposes a greater restriction upon obtaining full-time employment than does attending school at night. In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."

In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant for unemployment insurance benefits may not impose restrictions upon availability and still meet the standard of the statute. Attending day school is a material restriction upon one's availability for work and is thus disqualifying.

EVALUATION OF THE EVIDENCE

The credible evidence presented at the hearing establishes that the claimant has placed a material restriction on the availability to work by attending school. As the law states above, if school attendance conflicts with the ordinary hours of a claimant's occupation, it is a material restriction on availability and therefore a bar to benefits.

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 September 12, 2011, and until the claimant is fully able, available and actively seeking work without material restriction.

The Determination of the Claims Examiner is modified.



M Franceschini, 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 November 17, 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: October 29, 2011
CH/Specialist ID: WCU43
Seq No: 001
Copies mailed on November 02, 2011 to:
SHRANNON T. HEMPHILL
LOCAL OFFICE #63
SUSAN BASS DLLR