

**- DECISION -**

Claimant:	Decision No.:	00761-BR-18
MATTHEW MARKIEWICZ	Date:	August 29, 2018
	Appeal No.:	1803877
Employer:	S.S. No.:	
	L.O. No.:	01
	Appellant:	Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: September 28, 2018

**REVIEW OF THE RECORD**

The claimant filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on April 5, 2018. That Decision held the claimant was not engaged in an active work search and therefore ineligible for benefits, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning January 28, 2018.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division hearing. The Board reviews the record *de novo* and may affirm, modify or reverse the hearing examiner's Findings of

Fact or Conclusions of Law on the basis of the evidence submitted to the hearing examiner or the evidence the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., §8-5A-10*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03 (E) (1)*. Only if there has been clear error, a defect in the record or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

The General Assembly declared, 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)*.

In this case, the Board thoroughly reviewed the record from the Lower Appeals Division hearing. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to present documentary evidence and to make a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing or to allow additional argument. Sufficient evidence exists in the record from which the Board may make its Decision.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. However, the Board concludes those facts warrant different Conclusions of Law and a Reversal of the hearing examiner's Decision.

*Md. Code Ann., Lab. & Empl. Art., §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.

The claimant has the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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 Assn. Ltd. P'shp v. Babendreier, 146 Md. App. 1, 21 (2002)*.

An active work search is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. A claimant is expected to seek work diligently so as to return to gainful employment as soon as practical. A claimant is expected to seek work in field for which he or she has training, education, or experience and to seek work which he or she is willing and able to accept and perform. 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 Assn. Ltd. P'shp v. Babendreier, 146 Md. App. 1 (2002).*

The purpose of requiring a claimant to engage in an active work search is to ensure that the claimant is attached to the work force and is making a genuine effort to obtain suitable employment as expeditiously as practical. A claimant is not expected to search for work for which the claimant has no training, education or experience simply to satisfy this requirement. Similarly, a claimant is not required to apply for work which the claimant could not accept.

During a particular week, the claimant made one job contact that resulted in a job offer. The claimant began negotiating with the prospective employer, and the claimant began full-time employment the following week. The claimant's pursuit of this job was a reasonable course of action more likely to bear fruit than making another job contact, and the claimant was actively seeking work under Section 8-903. *Liller, 293-BR-91.*

In his appeal, the claimant offers specific contentions of error as to the Conclusions of Law in the hearing examiner's Decision. The claimant argues there is no logical reason to continue making job contacts during the two (2) weeks between accepting an offer of full-time employment and the beginning of that job. The claimant's argument is persuasive and in conformance with established Law.

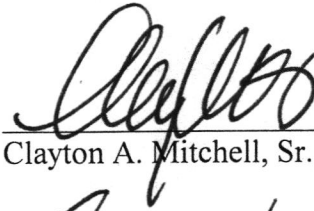
As noted above, in *Liller*, the claimant's pursuit of an actual job offer was a reasonable course of action more likely to bear fruit than making another job contact. In the matter on appeal, the claimant had more than an offer of employment. He actually accepted the job; was given a definitive start date; and was simply waiting until that agreed upon start date. Requiring the claimant to make pointless, additional job contacts, during the two (2) intervening weeks, is not only a waste of the claimant's time, but is a disservice to any employer he contacted. Those employers are looking to fill openings; openings which the claimant cannot accept, as he has already secured gainful employment. By making it appear he is interested in filling those openings the claimant is deceiving those employers and perhaps causing them to overlook a real candidate who could fill an opening and actually needs a job. A claimant is not required to apply for work which the claimant could not accept.

Therefore, the Board finds, based upon a preponderance of the credible evidence, the claimant met his burden of demonstrating he was exempt from actively seeking work from the time he received and accepted a bona fide offer of full-time employment until that employment began. Benefits are allowed from the week beginning January 28, 2018, through the week ending February 10, 2018. The Decision shall be Reversed for the reasons stated herein.

## DECISION

The Board holds the claimant was exempt from actively seeking work, within the meaning of *Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903*. The claimant is eligible to receive benefits from the week beginning January 28, 2018, through the week ending February 10, 2018, so long as the claimant met all the other requirements of the Law.

The Hearing Examiner's Decision is Reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MATTHEW MARKIEWICZ

JARED MURPHY

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

MATTHEW MARKIEWICZ

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: 1803877

Appellant: Claimant

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

April 05, 2018

**For the Claimant:** PRESENT

**For the Employer:**

**For the Agency:**

**ISSUE(S)**

Whether the claimant was actively seeking work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 903.

**FINDINGS OF FACT**

The claimant, Matthew Markiewicz, filed a claim for unemployment insurance benefits establishing a benefit year beginning August 27, 2017 (*See* Agency Exhibit No. 1) with a weekly benefit amount of \$160.00.

The claimant received a job offer on Monday, January 29, 2018. He accepted that offer on Wednesday, January 31, 2018. The job had a start date of February 12, 2018. Because he had obtained and accepted a job offer, the claimant did not make any job contacts for the weeks beginning Sunday, January 28, 2018 and Sunday, February 4, 2018. Instead, he made preparations for beginning the new job. He started the new job on Monday, February 12, 2018 and did not seek benefits or make an active search for work after that time.

## 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.

Section 8-903 does not specifically require that a claimant make personal job contacts, although that is the usual standard which is applied. The standard contained in the statute is whether the efforts an individual has made to obtain work have been reasonable and are such efforts as an unemployed individual is expected to make if he/she is honestly looking for work. Smith, 684-BR-83.

The Secretary shall exempt only from the "actively seeking work" eligibility condition a claimant who, at the time the claimant files an initial claim, provides a definite return-to-work date to the same employer that is within 10 weeks of the last day of employment, if the: (a) Return-to-work date is verified by that employer; and (b) Layoff is as a result of vacation, inventory, or any other purpose causing unemployment, except a labor dispute. Code of Maryland Regulations 09.32.02.07.

In Liller, 293-BR-91, during a particular week, the claimant made one job contact that resulted in a job offer. The claimant began negotiating with the prospective employer, and the claimant began full-time employment the following week. The Board of Appeals determined that the claimant's pursuit of this job was a reasonable course of action more likely to bear fruit than making another job contact, and the claimant was actively seeking work under Section 8-903.

## 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 evidence establishes that the claimant has not made an active search for work within the meaning of the Maryland Unemployment Insurance Law for the weeks beginning January 28, 2018 and February 4, 2018 or any week thereafter.

Even though the claimant had accepted a job offer, received on Monday, January 29, 2018, he still had an obligation under Section 8-903 to continue to make an active search for work until he actually started working at that new job in order to be eligible for benefits. There was no guarantee that the job would actually start as scheduled and that the claimant would actually become reemployed at that time. Job offers can be rescinded and circumstances may and do change, leaving a claimant without a job that he or she had believed had been obtained. Therefore, the requirements delineated under Smith, *supra*, are applicable for all weeks in which a claimant seeks unemployment benefits.

The claimant candidly acknowledged that he made no job contacts for the weeks beginning January 28, 2018 and February 4, 2018 because of the job offer which he had accepted. This situation is different from

Liller, *supra*, in that the claimant was not in negotiations with the new employer for these two weeks. The claimant received an offer, considered the offer, and accepted the offer. He still had time and opportunity to make job contacts, as a hedge against the new job's falling through and so as to be in compliance with Section 8-903. He made a conscious decision to end his job search once he received the offer of a new job.

Accordingly, a disqualification is warranted based upon Title 8, Section 903 of the Maryland Unemployment Insurance Law.

### 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 commencing January 28, 2018 and until the claimant meets the requirements of the law.

The determination of the Claims Specialist is affirmed.



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D A Fisher, 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**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 April 20, 2018. 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: March 26, 2018 01:45 PM

CH/Specialist ID: WCP8A

Seq No: 004

Copies mailed on April 05, 2018 to:

MATTHEW MARKIEWICZ  
COLLEGE PARK CLAIM CENTER  
JARED MURPHY