



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383 - 5032

- DECISION -

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 847-BH-81

DATE: 9-5-81

APPEAL NO.: 13050

S. S. NO:

CLAIMANT: Julia Waring

EMPLOYER: Burton Parsons, Inc.

L. O NO.: 43

APPELLANT: CLAIMANT

ISSUE Whether the Claimant was able to work and available for work within the meaning of Section 4(c) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

October 3, 1981

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Julia Waring - Claimant
Harriet Taylor - Legal Aid

Not Represented

FINDINGS OF FACT

The Claimant was first employed by Burton Parsons, Inc., in June of 1973. The Claimant was employed as a Laboratory Technician. She was earning \$213.00 per week at the time she left her employment on March 2, 1980.

The Claimant had injured her right leg in an automobile accident in 1977. After recovering from this accident, she returned to work. In 1978, she suffered a fall on the job, reinjuring her right leg.

She was paid Workmen's Compensation benefits for this injury during March, April and May of 1980. The Claimant recovered from her injury to the extent that she was able to perform any light work that did not require prolonged standing.

The Claimant's work as a Laboratory Technician at Burton Parsons, Inc., did require constant standing. The work was, in other respects, light work.

The Claimant requested that she be placed on duty which did not require constant standing. Although some attempts were made to reorganize her job so as to eliminate constant standing, these attempts were unsuccessful.

The Claimant is seeking work in the receptionist and clerical field, as well as work as a laboratory technician. She can function in some positions as a laboratory technician, provided that the laboratory is organized differently from that of her last Employer. She has some experience performing receptionist and clerical duties.

The Claimant is forty-one years old and has an eleventh grade education.

CONCLUSIONS OF LAW

The Board has long held that a Claimant may, in certain circumstances, be held to be able and available for work even if unable to perform his or her last job.

The Law requires that an individual is able to work, but this does not mean that he must be able to do the work he performed in his last employment. Changes in an individual's condition may occur through illness, accident or the passing years which may require a change in work habits or work rehabilitation.

C.E. Kimmel and Company, Board Decision No. 11-EA-66, June 22, 1956.

In a case where a Claimant cannot perform his or her former work, a determination of whether he or she meets the requirements of Section 4(c) must be made. The factors to be considered in such a case were set out in Randall v. Employment Security Administration, CCH, UIR, Paragraph No. 8400, Superior Court of Baltimore City, decided December 13, 1976. In that case, Judge Greenfield stated:

This Court deems the following facts essential to the determination of the Claimant's ability to work within the meaning of the Law. On remand, the Board of Appeals should make findings of fact on the following issues:

- (a) the type of work formerly done by the Claimant
- (b) the type of work the Claimant was capable of performing (at the time the claims in issue were filed)
- (c) the type of work the Claimant sought in light of the medical restrictions place upon him, and,
- (d) the existence of or market for the type of work the Claimant was seeking.

The Board adopts this language as indicative of the essential findings of fact necessary for a reasoned decision on a case such as this.

Applying the factors to this case, the Board has found that the Claimant was a laboratory technician and that this position required constant standing. The Claimant is capable of performing any light work which did not require constant standing, including laboratory work, clerical and receptionist work. The Claimant is seeking laboratory technician work that does not require constant standing as well as clerical and receptionist work.

Although there was scant evidence concerning the fourth factor, i.e., the existence of or market for the type of work the Claimant was seeking, the Board is satisfied that there are numerous jobs in the clerical, receptionist and technician fields which do not require prolonged standing. This fact was not seriously contested by anyone.

After extensive studies of the job market, the Social Security Administration has taken administrative notice of the fact that most clerical, technical and administrative jobs do not require prolonged walking or standing. See, 20 C.F.R. section 404. 1539, Subpart P, Appendix 2, Section 201.00 (a). The Board is not adopting this or any other Social Security regulation, but the Board does find that these regulations may be useful in determining the amount of evidence necessary in order to make findings on an issue such as this. This regulation simply codifies what is really an obvious fact. The Board does not intend to require voluminous evidence to prove obvious facts.

After consideration of these four factors, the Board finds that the Claimant, although unable to perform her former job, is able to perform a wide range of jobs which do exist in the job marketplace, and that she is actively seeking these jobs. She is able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law.

DECISION

The Claimant is able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. She is eligible for benefits effective from March 2, 1980, if she is otherwise eligible under the Law.

The decision of the Appeals Referee is reversed.

Thomas W. Keesh

Chairman

Loyal A. Madenick

Associate Member

K:W

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DATE OF HEARING: July 21, 1981

COIES MAILED TO:

CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.

UNEMPLOYMENT INSURANCE - WHEATON



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
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STATE OF MARYLAND
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- DECISION -

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

CLAIMANT: Julia Waring

DATE: 3/18/81

APPEAL NO.: 13050

S. S. NO.:

EMPLOYER: Burton Parsons, Inc.

L. O. NO.: 43

APPELLANT: Claimant

ISSUE: Whether the claimant was able and available for work within the meaning of Section 4(c) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAYBE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

April 2, 1981

-APPEARANCES-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
 Hariette Taylor, Esquire, Legal Aid Bureau Inc.

Not Represented

The claimant was disqualified by the local office under both Sections 6(a) and 4(c) of the Maryland Unemployment Insurance Law. The claimant has withdrawn her appeal of the disqualification under Section 6(a) of the Law and at this time is appealing only the Section 4(c) disqualification.

FINDINGS OF FACT

The claimant began working for the employer, a pharmaceutical manufacturer, as a full-time Laboratory Aide in June of 1973. Her last day of work was March 4, 1980 and she was officially terminated by the employer effective July 7, 1980.

Sometime prior to her last day of work the claimant had injured her knee in an accident and then again injured her knee in another accident that was work related. The claimant continued to work after this accident but her leg began swelling to the extent that she could not continue in her work. She found it very difficult to walk and then again found it very difficult to sit for a period of time. The claimant was last examined at Walter Reed Hospital March 9, 1981 and her doctor found her to have stiffness in the leg and limited movement.

The claimant, who was originally classified as a laboratory technician, has been reclassified by the Maryland State Employment Service as a Receptionist and clerical worker. However, the claimant is restricting her search for employment to employment which not require her a great deal of walking or a great deal of sitting.

COMMENTS

The non-monetary determination of the Claims Examiner that the claimant was not able and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law is supported by the testimony of the claimant and the evidence. The claimant's physician has found only subjective signs of knee pathology and found no significant knee pathology to preclude her from working and able to perform only light duty. This is a restriction on the claimant's ability and availability for work and detaches her from the available work force. It is for this reason that the determination of the Claims Examiner must be affirmed.

DECISION

The claimant was not able and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. The claimant is disqualified from March 2, 1980 and until able and available for full-time work without restrictions. The non-monetary determination if affirmed.

Date of Hearing: 3/10/81

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Copies mailed to:


Gerald E. Askin
Appeals Referee

Claimant
Employer
Unemployment Insurance - Wheaton

Harriette Taylor

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