

**- DECISION -**

Claimant:	Decision No.:	896-BR-15
JACQUELINE P MATTHEWSGUY	Date:	April 10, 2015
	Appeal No.:	1411229
	S.S. No.:	
Employer:	L.O. No.:	63
AMERICAN BEAUTY ACADEMY INC	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.

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**- 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 11, 2015

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**REVIEW OF THE RECORD**

This matter comes before the Board of Appeals ("Board") pursuant to an Order of the Circuit Court for Baltimore City. The Circuit Court remanded this matter to the Board in order for the Board to review the medical documents in the file and issue its own decision.

On appeal, the Board reviews the evidence of record from the Lower Appeals 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 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

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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 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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. The claimant appeared and testified. The Agency did not appear. The claimant was given the opportunity to offer evidence and to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to conduct its own hearing, or allow additional legal argument. However, the Board will consider new evidence as directed by the Circuit Court and make its own *Findings of Fact*.

The Board finds the hearing examiner's *Findings of Fact* are not supported by substantial evidence in the record. Those facts are insufficient to support the hearing examiner's Decision. The Board moves into evidence the medical documentation provided by the claimant with her letter of appeal to the Board. No other party filed an appearance or appeared at the hearing. There being no one to object, the Board enters into evidence as *Claimant's Exhibit B1*, the medical documentation from Dr. Taibi stating that the claimant is able to work fulltime as of March 19, 2014. Now based upon all the evidence in the record, the Board makes the following *Findings of Fact* and reverses the hearing examiner's decision.

The claimant filed a claim for unemployment insurance benefits establishing a benefit year effective April 6, 2014.

Since opening her claim the claimant has been seeking work in the fields of administrative work, case management, and property management. Prior to opening her claim, the claimant had been ill for a period of six months with bronchial asthma. However the claimant was able to work as of the time she opened her claim for benefits. See *Claimant's Exhibit B1*.

*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 Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1, 21 (2002).

Being able to work is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. The concept of being able to work requires an individual to be physically and mentally capable of performing the type of work being sought. Persons with injuries, illness or disabilities may still be able to work if they seek appropriate work consistent with their training, education and experience. In *Connor v. City of Baltimore*, 416-BR-87, the Board held: "A claimant who is restricted from performing certain work is not disqualified under Section 8-903 if he shows that he is able to do other work and is, in fact, seeking other work that he is capable of performing during the time has the restriction." The Board has also held, in *Swafford v. U. S. Postal Service*, 252-BH-89: "When severe limitations are placed upon a claimant's ability to work, the claimant has the burden of showing not only that she was seeking work, but seeking work that she could do, given her limitations."

The record in this case establishes that the claimant was able to work at the time she opened her claim for benefits.

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 did meet 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 affirmed for the reasons stated herein and in the hearing examiner's decision.

### DECISION

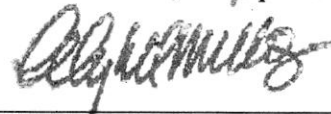
The claimant is able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. Benefits are allowed from the week beginning April 6, 2014.

The Hearing Examiner's decision and the Board's previous decision are Reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

JACQUELINE P. MATTHEWSGUY  
AMERICAN BEAUTY ACADEMY INC  
SUSAN BASS DLLR  
AMERICAN BEAUTY ACADEMY INC  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

JACQUELINE P MATTHEWSGUY

SSN #

**Claimant**

Vs.

AMERICAN BEAUTY ACADEMY 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: 1411229

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

May 30, 2014

**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, Jacqueline Matthews Guy, filed for unemployment insurance benefits establishing a benefit year effective April 6, 2014 with a weekly benefit amount of \$144.00.

Since opening her claim for benefits, the claimant has been seeking work in the fields of administrative work, case management, and property management. With respect to whether the claimant has any restrictions on her availability to perform work, the claimant was advised by her physician on March 19, 2014 to not work for a period of six months due to bronchial asthma. Specifically, her physician noted that she cannot work until her severe asthma improves and responds to treatment (claimant exhibit #1).

## 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. 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. Specifically, the claimant's physician reported on March 19, 2014 that the claimant will be unable to work for a period of six months and thus the claimant is not meeting the conditions of eligibility. The record was left open for additional medical documentation; however, no such documentation was submitted.

## 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 April 6, 2014 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



M M Medvetz, 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 June 16, 2014. 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: May 21, 2014  
AEH/Specialist ID: WCU8K  
Seq No: 001  
Copies mailed on May 30, 2014 to:

JACQUELINE P. MATTHEWSGUY  
AMERICAN BEAUTY ACADEMY INC  
LOCAL OFFICE #63