

## **DECISION**

Claimant:  
MARIAN D NESTER

Decision No.: 957-SE-03

Date: April 16, 2003

Appeal No.: 0226169

Employer:

S.S. No.:

L.O. No.: 61

Appellant: Claimant

Issue: Whether there is good cause to reopen this dismissed case within the meaning of COMAR 09.32.06.02N.  
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 16, 2003

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### **- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

MARIAN D. NESTER

N/A

## PRELIMINARY STATEMENT

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all documentary evidence introduced in this case, as well as the appeal file of the Department of Labor, Licensing and Regulation.

## FINDINGS OF FACT

An Unemployment Insurance Appeals Hearing was scheduled on October 28, 2002 at 12:15pm to take testimony on whether the claimant was entitled to unemployment insurance benefits. Notice of this hearing was sent to the parties in this matter on October 18, 2002 to the addresses of record. The appellant failed to appear within ten minutes of the scheduled time.

However, on October 26, 2002 the claimant (appellant) wrote a letter advising that she would be unable to attend the October 28<sup>th</sup> hearing due attending training related to her trade as a millwright and requesting a telephone hearing to be set at a future date. This letter was received by the Lower Appeals Division on October 28, 2002 (Special Examiner Exhibit #1). It was not answered or otherwise acted upon. A dismissal of appeal was issued as a result of the claimant's failure to appear on October 28<sup>th</sup>.

The claimant believed that her October 26 letter wherein she requested a telephone hearing would be honored. Having not heard about the rescheduling that she had requested, the claimant again wrote to Lower Appeals on December 1, 2002 asking for the telephone hearing. This correspondence was answered in the form of a Denial of Petition to Reopen because of a late filing of her Petition to Reopen (i.e. more than seven days after a dismissal).

Further testimony from the claimant reveals that she is an apprentice millwright. As part of her employment program as a millwright she is required to attend mandatory training on Mondays for 26 weeks. Otherwise she relies upon her union business agent for placements. She is able to work, available for work and actively seeking work.

## CONCLUSIONS OF LAW

COMAR 09.32.06.02M states that if a party appealing fails to appear at a hearing after having been given the required notice of the hearing, the hearing examiner may dismiss the appeal. Failure to be present at the location designated for the hearing within 10 minutes of the time scheduled is a failure to appear within the meaning of this section.

COMAR 09.32.06.02N(2) provides that a request for the reopening of a dismissed case may be granted for the following reasons:

- (a) The party received the hearing notice on or after the date of the hearing as a result of:
  - (i) an untimely or incorrect mailing of the hearing notice by the

- (ii) Appeals Division, or  
a delay in the delivery of the hearing notice by the United States  
Postal Service;
- (b) An emergency or other unforeseen and unavoidable circumstance  
prevented a party from both attending the hearing and requesting a  
postponement of the hearing;
- (c) A party requested a postponement for the reasons listed above, but it  
was improperly denied.

COMAR 09.32.06.02N(3) provides that misreading of a properly prepared hearing notice as to the date, time, and place of the hearing is not good cause for reopening a dismissed case.

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.

### **EVALUATION OF THE EVIDENCE**

The claimant's sworn testimony and a review of the correspondence history of this appeal supports substantive compliance with the requirements of COMAR 09.32.06.02N in the above captioned case. The claimant's request dated October 26 could have been retained and considered a Request to Reopen. No one is placed at disadvantage in construing this document in this manner. The claimant did display due diligence in pursuing her appeal. This case is reopened, allowing consideration of the substantive issues in the case.

It is clear from the testimony presented and the documentary evidence submitted by the claimant that the claimant is able to work, available for work and actively seeking work. The claimant's work placements are arranged through a union business agent. Any placement provides for the claimant's attendance of mandatory training on Mondays for a period of 26 weeks. In light of the special nature of the claimant's apprenticeship, this attendance of training shall not be construed as restricting the claimant's availability for work in any way. Accordingly, the claimant has fulfilled the requirements of the Maryland Unemployment Insurance Law and is found to be fully able to work, available for work and actively seeking work without restriction.

**DECISION**

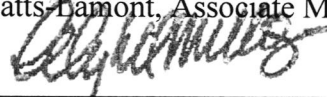
The appealing party established compliance with the requirements of COMAR 09.32.06.02N in the above-captioned case. This case is reopened, allowing consideration of the substantive issues in the case.

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 22, 2002 and thereafter, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is reversed.



Donna Watts-Famont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

RD

Date of hearing: March 12, 2003

Copies mailed to:

MARIAN D. NESTER

LISA BLACKWELL

MICHAEL F. TAYLOR, COUNSEL, OUI

Michael Taylor, Agency Representative