

- DECISION -

Claimant:	Decision No.:	3044-BR-14
AUGUSTUS G HARRIS II	Date:	November 24, 2014
	Appeal No.:	1413402
	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: December 24, 2014

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on June 20, 2014. That Decision held the claimant was not available for work, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, and therefore ineligible for benefits, from the week beginning May 11, 2014 through the week ending June 21, 2014.

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 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 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 allow additional argument.

The Board adopts the first and second paragraphs, and the first two sentences of the third paragraph of the hearing examiner's Findings of Fact. Those facts are supported by substantial evidence in the record. The Board rejects the remainder of the hearing examiner's Findings of Fact. The Board makes the following additional findings of fact:

As soon as the claimant learned that there was flexibility in the scheduling of his CDL classes, the claimant was willing to exercise that option if he were offered full-time employment which conflicted with his current school schedule. The claimant was seeking employment in fields he knew offered schedules which would not, of necessity, conflict with his school.

The Board concludes that these facts warrant 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 Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1, 21 (2002)*.

Being available for work 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 be willing to work most hours of most days in which work is performed in the usual occupation or business in which the claimant is seeking employment. A claimant is not required to be available to work twenty-four hours per day, seven days per week, but must not unduly restrict the hours or days he or she is willing to work. A claimant is also expected to be prepared to accept an offer of work without limitations such as a lack of transportation or child care. A claimant is not required to have made prior arrangements, but is expected to be able to do so in order to accept an offer of suitable work. A claimant is not expected to violate a religious principle or endanger his or her health or well-being, simply to establish availability for work.

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. *Plaughner 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'ship v. Babendreier*, 146 Md. App. 1, 22 (2002).

In his appeal, the claimant reiterates much of his testimony from the hearing. He offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant does not cite to the evidence of record and makes no other contentions of error.

The evidence establishes that, for a three-week period, the claimant was unwilling to change or drop his classes. He did not refuse any work during this period. And he was seeking work in fields which offer jobs during all hours. There is no requirement that a claimant be available to accept work during all days, and all shifts. A claimant is expected to make himself available for work for which he has experience, training or education. A claimant is expected to not place undue limitations or restrictions on his hours of availability. The claimant's exclusion of daytime hours was not an undue restriction on his availability to accept full-time work, particularly where he was seeking work commonly performed during evening and night shifts.

As soon as the claimant learned that his school schedule might be considered an impediment, he discussed the situation with the school and learned of the flexibility in the class schedule. Clearly, the claimant was willing to do what was necessary to make himself available to obtain employment. The Board concludes that the claimant was available for work within the meaning of Maryland law from the week beginning May 11, 2014, and so long as he continued to meet the eligibility requirements.

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 his burden of demonstrating that he was able, available, and actively seeking work, from the week beginning May 11, 2014, 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 Board holds that the claimant was 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*. The claimant is eligible to receive benefits from the week beginning May 11, 2014, so long as the claimant is meeting the other requirements of the law.

The Hearing Examiner's decision is Reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

AUGUSTUS G. HARRIS II

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AUGUSTUS G HARRIS II

Before the:
**Maryland Department of Labor,
Licensing and Regulation
Division of Appeals**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

SSN #

Claimant

vs.

Employer/Agency

Appeal Number: 1413402
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

June 20, 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, Augustus G. Harris II, filed for unemployment insurance benefits establishing a benefit year effective September 1, 2013. The claimant began taking classes at the North American Trade School (School) during the week beginning May 11, 2014, and is in class on Monday through Thursday from 8:00 a.m. to 3:00 p.m. He is seeking to become certified for a commercial driver's license (CDL) and his course of study will be completed on July 24, 2014.

The claimant is seeking full-time work, primarily in his previous occupation in shipping and receiving in a warehouse, for which the customary hours of employment are 24 hours a day, seven days a week.

After receiving the Notice of Benefit Determination of May 28, 2014, which denied him benefits, the

claimant went to the School and explored his scheduling options. He was informed that he could take classes on weekends as well as during the week. When questioned at the hearing as to how he would be able to work a hypothetical Wednesday through Sunday schedule in a warehouse and still attend school, the claimant, after considering the question, indicated that he was in such financial need that he would be willing to drop his schooling in order to take such a job.

The claimant is physically and mentally able to perform the work he is seeking, has no child/elder-care responsibilities, and has access to reliable transportation.

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 he is in compliance with Agency requirements. In the case at bar, that burden has been partially met.

Before the end of May, the claimant did not have knowledge that he could take classes on weekends. Even after that, it appears that he did not consider that weekend class availability did not solve his problem of having a material restriction on his availability. His testimony in the hearing (on June 18, 2014) that he would drop his schooling completely if faced with a work schedule that would require him to work some weekdays and on the weekend, appeared to be a decision made at that time, not before. Therefore, until the time of the hearing, the claimant was not making himself available to work full-time without a material restriction. Once he decided that he would have to be willing to drop his schooling in order to remove that restriction, he became available to work without a material restriction.

Accordingly, a disqualification is warranted for the period before the claimant became willing to drop his classes if necessary to accept employment, and benefits will be allowed only for those weeks in which the claimant demonstrated no material restriction upon availability for work, as discussed above.

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 from the week beginning May 11, 2014 through the week ending June 21, 2014.

IT IS FURTHER HELD THAT the claimant is able, available and actively seeking work within the

meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed from the week beginning June 22, 2014, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



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 of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 July 07, 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: June 18, 2014

DAH/Specialist ID: RWD2E

Seq No: 003

Copies mailed on June 20, 2014 to:

AUGUSTUS G. HARRIS II

LOCAL OFFICE #63

SUSAN BASS DLLR