

- DECISION -

Claimant:
KAREN A FORSYTHE

Decision No.: 1015-BR-13

Date: April 5, 2013

Appeal No.: 1242501

Employer:

S.S. No.:

L.O. No.: 20

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: May 6, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and modifies the hearing examiner's decision.

The claimant made the required job contacts during the week ending November 17, 2012. For the week of November 18, 2012 through the week of November 24, 2012 the claimant made one job contact. However, the claimant searched the classified section of the papers to seek appropriate job openings. Additionally, the claimant searched several internet sites looking for appropriate positions. There were no suitable jobs posted.

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).

The Board reviews the record *de novo* and may affirm, modify, or reverse the 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)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that she 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).

A claimant should actively seek work in those fields in which she is most likely to obtain employment. *Goldman v. Allen's Auto Supply*, 1123-BR-82; also see and compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier*, 146 Md. App. 1 (2002).

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. *Plaugher 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'shp v. Babendreier*, 146 Md. App. 1, 22 (2002).

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.

The standard of actively seeking work within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-903* is whether the efforts an individual had made to obtain work has been reasonable and are such efforts as an unemployed individual is expected to make if she is honestly looking for work. *Smith*, 684-BR-83. In the instant case, the credible evidence established that the claimant was actively seeking work. The claimant was offered a job on November 17, 2012 with a start date of November 26, 2012 contingent on her references checking out. The week of November 18, 2012, the claimant continued her job search making an active search by submitting one job application and searching the local papers and appropriate job sites. This was Thanksgiving week and many businesses were closed that Thursday and Friday.

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 met 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 *Maryland Annotated, Labor & Employment Article, §8-903* for the weeks beginning November 11, 2012, and thereafter provided the claimant meets all requirements of the Maryland Unemployment law. The decision shall be modified 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 November 11, 2012.

The Hearing Examiner's decision is modified.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

KAREN A. FORSYTHE

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KAREN A FORSYTHE

SSN #

vs.

Claimant

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: 1242501

Appellant: Claimant

Local Office : 20 / WALDORF

January 16, 2013

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, Karen Forsythe, filed a claim for unemployment insurance benefits establishing a benefit year beginning January 8, 2012 with a weekly benefit amount of \$430.00.

During the week ending November 17, 2012, the claimant made three (3) job contacts. On November 12, 2012, she contacted Romeo Foods about a job in sales. On November 13, 2012, she contacted Right at Home for a job as a sales representative. On that same date, she contacted Lakeview Resort ("Lakeview") for a job as resort sales manager.

On November 17, 2012, Lakeview offered the claimant the sales manager job contingent upon her references checking out. The following week, the claimant made only one job contact. On November 20, 2012, she contacted SCA.com to apply for a job as a strategy manager. The claimant made no other job contacts during that week.

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.

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 did make the required job contacts during the week ending November 17, 2012. The claimant provided the names of the companies she contacted along with the dates of her contacts and the positions for which she applied. However, she admitted that she made only one (1) job contact during the week of November 18, 2012 through November 24, 2012.

The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that one seeks benefits. It is not permissible to cease looking at any time while still in claim status. While the claimant did have a job offer from a prospective employer, that offer was contingent upon her references checking out appropriately. Therefore, she was obligated to continue her active search for work in the event that the job with Lakeview fell through.

Accordingly, I hold that the claimant did not make an active search for work within the meaning of the Maryland Unemployment Insurance Law from November 18, 2012 through November 24, 2012 and benefits are denied for that week.

DECISION

IT IS HELD THAT the claimant was 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 November 18, 2012 through November 24, 2012. Benefits are allowed commencing November 25, 2012, and thereafter,

provided the claimant meets all requirements of the 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.



S H Anderson, 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

Any party 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 January 31, 2013. 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: January 15, 2013

BLP/Specialist ID: RWD3B

Seq No: 001

Copies mailed on January 16, 2013 to:

KAREN A. FORSYTHE

LOCAL OFFICE #20

SUSAN BASS DLLR