

- DECISION -

Claimant:
PAMELA A MOXLEY

Decision No.: 1164-BR-06

Date: May 30, 2006

Appeal No.: 0604757

S.S. No.:

Employer:

L.O. No.: 63

Appellant: Agency

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.

- 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: June 29, 2006

REVIEW ON THE RECORD

The Board adopts the following findings of fact and reverses the hearing examiner's decision. The claimant opened a claim for benefits with a benefit year beginning on December 14, 2006.

The claimant was in Hawaii from February 10, 2006 through February 22, 2006. The claimant attended her daughter's wedding held on February 18, 2006. She had her house sitter mail out resumes during her absence. The claimant admits that during her absence, a potential employer, "Ruth's Chris Steak House", called the claimant for an interview. The potential employer was interviewing from February 13, 2006 through February 27, 2006. The claimant instructed her house sitter to inform the potential employer that she was "not available" for an interview until her return from Hawaii. The claimant actively sought work on her own after she returned from Hawaii.

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.

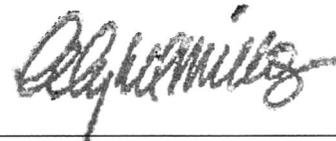
The Board finds that under the facts of this case the claimant did not make an honest and active search for work. *Nachand, 181-BH-84*. The claimant delegated her work search to her house sitter while she was in Hawaii. The claimant was out of state for 13 days. Although she asserts that she was attending her daughter's wedding, the length of her absence is tantamount to a Hawaiian vacation. The claimant was not available for a job interview until her return; therefore, the Board finds that the claimant was not available for work.

The provisions of § 8-903(a) is a conjunctive test. The claimant has the burden of proving all three in order to be eligible for benefits. The Board finds that when a claimant is out of state and otherwise unavailable to interview for full time work, the fact that a claimant delegates his or her job search to another in her absence does not support a finding in favor of benefits. The claimant has not met her burden in this case. The hearing examiner's decision shall be reversed.

DECISION

The claimant is not 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. She is disqualified from receiving benefits from the week beginning February 12, 2006 through February 26, 2006.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Copies mailed to:
PAMELA A. MOXLEY
SORETHA STATEN
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

PAMELA A MOXLEY

SSN #

Claimant

vs.

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: 0604757

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

April 11, 2006

For the Claimant : PRESENT

For the Employer :

For the Agency: SORETHA STATEN

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's benefit year began on December 14, 2005. Her weekly benefit amount was established at \$323.

The Agency imposed an indefinite benefit penalty effective February 5, 2006, based on information provided by the claimant on a telecert.

The credible evidence indicates that the claimant went out of state to attend her daughter's wedding in Hawaii between February 10, 2006 and February 22, 2006. Prior to leaving, the claimant made four job contacts for the week beginning February 5, 2006.

While the claimant was gone, she had a house sitter attending to her affairs in Maryland. On February 13, 2006, the house sitter sent out two resumes indicating two job contacts for the week beginning February 12, 2006. On February 20, 2006, the house sitter sent out two more resumes to show job contacts for the week beginning February 19, 2006.

The claimant has continued to seek full-time work since returning to Maryland, although she has been working part time since March 5, 2006.

CONCLUSIONS OF LAW

Md. Code Ann., Labor and 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.

Md. Code Ann., Labor & Emp. Article, Section 8-907 provides that an individual may not be denied benefits for any week of unemployment for failure to meet the requirements of Section 8-903(a)(1) of the subtitle to be able to work, available for work, and actively seeking work if the failure results from illness or disability that occurs after the individual has registered for work, provided that no work that would have been considered suitable at the time of the initial registration is offered to the individual after the beginning of the illness or disability.

Pursuant to COMAR 09.32.02.09(B), "A claimant filing sick claims shall furnish a written statement or other documentary evidence of the claimant's health problem from a physician or hospital. The documentary evidence of the health problem shall be updated every 30 days."

COMAR 09.32.02.09(C) requires that, "A sick claim shall be filed and documented within 14 days of the last week before the onset of the illness or inability to work for medical reasons, if the claimant was registered for work during the week for which the claim is filed."

EVALUATION OF EVIDENCE

In this case, the claimant did not file sick claims. Therefore, Section 8-907 of the law is not applicable.

In this case, although the claimant was out of state for a period of 12 days, during that time frame, she did make job contacts. The claimant did not turn down any suitable work, as none was offered during that time period. Although the claimant was not physically present, she had a house sitter who was able to send in her job contacts for her in her absence. The claimant has substantially complied with the spirit of the law.

DECISION

IT IS 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 February 5, 2006, 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 reversed.

J. Goldenberg, 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 the overpayment within 30 days from the date the overpayment is established. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. 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.
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 April 26, 2006. 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

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : March 28, 2006
AEH/Specialist ID: WCU2N
Seq No: 003
Copies mailed on April 11, 2006 to:
PAMELA A. MOXLEY
LOCAL OFFICE #63
SORETHA STATEN