

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor  
J. Randall Evans, Secretary*

*Board of Appeals  
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Baltimore, Maryland 21201  
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*Board of Appeals  
Thomas W. Keech, Chairman  
Hazel A. Warnick, Associate Member  
Donna P. Watts, Associate Member*

— DECISION —

|           |   |                 |         |
|-----------|---|-----------------|---------|
|           | Decision No.:   | 1338-BR-92      |         |
|           | Date:   | August 7 , 1992 |         |
| Claimant: | Vicki A. Kachnowich   | Appeal No.:     | 9205221 |
|           |   | S. S. No.:      |         |
| Employer: | Baltimore County Maryland   | L. O. No.:      | 022     |
|           |   | Appellant:      | AGENCY  |
| Issue:    | Whether the claimant was able to work, available for work and actively seeking work, within the meaning of Section 8-903 of the Labor and Employment Article. |                 |         |

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY. IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

September 6, 1992

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:  
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Hearing Examiner.

In a case where a claimant has gone on a voluntary leave of absence, the Board has generally held that a claimant is not able and available for work, during the entire length of the leave of absence, even if the claimant is ready to return to work prior to the expiration of the leave, but the employer

does not have a position for her. See, e.g., Muller v. Board of Education, 144-BH-83.<sup>1</sup> This appears to be the reasoning applied by the claims examiner in the original determination in this case, disqualifying the claimant until March 21, 1992.

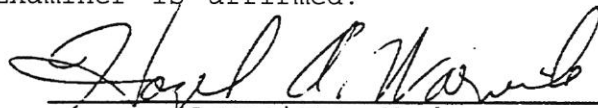
However, the Board concludes that this case is an exception to this general rule, because the employer did not hold open the claimant's position for one year, one of the terms of the leave of absence. The claimant's leave of absence began in September, 1991 and was to last until" March 22, 1992. It was the claimant's understanding, and this was not contested by the employer, that her job would be held open for her for up to one year. In February, 1992, she was ready to return to work and contacted the employer. She was told that there was no job opening for her and that she would have to be placed on a "transfer list" and wait for an opening. It is also uncontested that there was no opening for her in March, 1992 as well; thus the fact that she was ready a month early did not make a difference. By February it was clear that the employer could not meet the terms of the leave of absence.

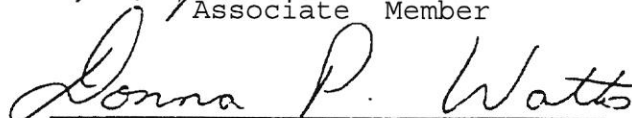
Under these circumstances the Board finds that it would be unfair to hold the claimant to the terms of the leave, and find her unavailable for work until March 22, 1992, when the employer had not abided by the terms of the leave. The uncontested evidence is that the claimant was able and available for work beginning in February, 1992. For these reasons, the decision of the Hearing Examiner is affirmed.

#### DECISION

The claimant was able, available and actively seeking work, within the meaning of Section 8-903 of the Labor Et Employment Article, beginning February 9, 1992.

The decision of the Hearing Examiner is affirmed.

  
Associate Member

  
Associate Member

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BEL AIR

John T. McGucken, Legal Counsel, D.E.E.D.

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<sup>1</sup>This case also held that an employee who leaves on a temporary leave of absence has not voluntarily quit her job.