

 Maryland  
Department of Economic &  
Employment Development

William Donald Schaefer  
Governor

Mark L. Wasserman  
Secretary

Board of Appeals  
1100 North Eutaw Street  
Baltimore, Maryland 21201

Telephone: (410) 333-5032

**- DECISION -**

Decision No.: 2059-BR-93

Claimant:  
**LILLIAN I. SEFCIK**

Date: December 6, 1993

Appeal No.: 9313321

Employer:  
**JOWETT INC**

S.S. No.:

L.O. No.: 07

Appellant: **Claimant**

Issue: Whether the claimant failed, without good cause, to apply for or to accept available, suitable work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1005.

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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 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: January 5, 1994

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**REVIEW ON THE RECORD**

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. However the Board concludes that these facts warrant a different conclusion of

law, with regard to §8-903 of the Labor and Employment Article of the Annotated Code of Maryland.

Section 8-903 of the Labor and Employment Article requires that a claimant be able to work, available for work, and actively seeking working in order to receive unemployment benefits. The claimant was meeting these requirements of the law.

The fact that the claimant had transportation that she felt was not suitable to drive 100 miles round trip each day to work, does not breach the requirements of §8-903. The claimant had access to three automobiles that she could use to get back and forth to work. Section 8-903 does not prescribe a milage amount that a claimant must be able to drive in order to meet the requirements of the law.

The Board of Appeals finds that the claimant did not receive a copy of the Hearing Examiner's decision denying her benefits. As a result, the claimant had no knowledge of the appeal deadline.

#### DECISION

The decision of the Hearing Examiner as to §8-1005 of the Labor and Employment Article and COMAR 24.02 .06.02N are affirmed.

The claimant was able to work, available for work and actively seeking work within the meaning of §8-903 of the Labor and Employment Article. No disqualification from the receipt of benefits shall be imposed pursuant to this section of the law.

The decision of the Hearing Examiner pursuant to §8-903 is reversed.

The claimant did not file a late appeal to the Board of Appeals.

  
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Donna P. Watts, Associate Member

  
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Hazel A. Warnick, associate Member

km

Copies mailed to:  
LILLIAN I. SEFCIK  
JOWETT INC  
Local Office - #07

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

LILLIAN I. SEFCIK

Before the:

SSN #

**Claimant**

vs.

JOWETT INC

**Maryland Department of Economic and  
Employment Development  
Appeals Division**  
1100 North Eutaw Street  
Room 511  
Baltimore, MD 21201  
(401) 333-5040

Appeal Number 9313321  
Appellant: Employer  
Local Office: 07 / College Park

**Employer/Agency**

September 1, 1993

**For the Claimant: PRESENT**

**For the Employer: PRESENT**

**For the Agency:**

### **ISSUE(S)**

Whether the claimant failed to apply for or accept available, suitable work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 1005. Whether there is good cause to reopen this dismissed case under COMAR 24.02 .06.02N.

### **FINDINGS OF FACT**

The employer/appellant hearing was originally scheduled for July 14, 1993 and the appellant, having due notice of this hearing mailed to its last address of record, failed to appear. The appeal was dismissed for non-appearance and the appellant subsequently petition for reopening of this appeal. A new hearing was set for August 20, 1993 and the appellant was again duly notified of the hearing date and appeared.

The appellant maintains that the company appeared at 11:30 a.m. on July 14, 1993, the time indicated on the notice for the hearing, and that the case was not called.

The claimant worked for this employer for almost four months as a plumber, earning \$15.10 per hour for an average week of twenty eight hours. The claimant had been working an Quantico, Virginia, and driving approximate 55 miles each way from her home in Washington D. C. A few days before

the job in Quantico was to end, the employer offered to claimant a job in Dahlgreen, Virginia, approximately 50 miles from the claimant's home. The claimant did not accept the job because she felt that her transportation was not reliable enough. At the time of the claimant's refusal for the new position, she was still employed but not in claim status.

The claimant owns a 1979 Dodge which she feels can be driven twenty to thirty miles one way to work, but not fifty miles to work. While working in Quantico, the claimant also borrowed her boyfriend's 1975 Ford truck and 1977 Cadillac car. She felt that these vehicles also were not suitable for one way trips off@ miles.

The claimant's employer had other employees from her general area who would be working on the Dahlgren Virginia job, however, the claimant did not check with the employer to determine who these other employees were.

#### **CONCLUSIONS OF LAW**

Good cause exist in this case to reopen this dismissed claim. The employer produced as employer's exhibit #1 the hearing notice sent to the employer on July 3, 1993 for the July 14, 1993 hearing. Attached to that notice is a business card of the employer's representative who appeared at both hearings. The employer's exhibit #1 was present in the appeal file, having been placed there by someone in the Local Office. It is highly unlikely that the employer could have placed employer's exhibit #1 in the file between the first and second hearings. Therefore, it must be concluded that the employer was present at the July 14, 1993 hearing. It is conceivable that the employer did not hear the case called or that the Hearing Examiner did not call the case in voice loud enough to be heard from where the employer was sitting. It should be noted that the waiting area in the College Park Office is extremely large and often very noisy with many claimants and employers.

The issue in this case is whether the claimant failed to accept suitable work. There is little doubt that the work offered to the claimant in Dahlgreen, Virginia was suitable, as it was in the same field that she had been working in Quantico, Virginia, ie plumbing. However, the Claims Examiner in the local office is correct in stating that the claimant was not in claim status at the time she declined the job offer. Therefore, benefits cannot be disallowed pursuant to Section 1005 of the Maryland Unemployment Insurance Law.

However, the question of whether a claimant is able, available and actively seeking work is always before the Hearing Examiner. In this case, it is held that the claimant is not available for work as of the date of the hearing in this case, August 20, 1993. The claimant, by her own admission does not have adequate transportation to go to and from work. Although the claimant could not explain why her car could go 20 to 30 miles and not 50 miles one way, it is her determination that it cannot. Therefore, the claimant is not available for work.

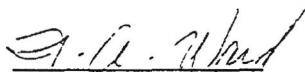
## DECISION

It is held that the claimant was not in claim status at the time of the job refusal; therefore, benefits are allowed for the week beginning May 9, 1993 pursuant of Section 1005 of the Maryland Unemployment Insurance Law.

It is held that good cause exist for the reopening of this dismissed appeal and it is therefore, reopened.

It is held that the claimant is not in compliance with the requirements of Section 903 of the Maryland Unemployment Insurance Law, which requires a claimant for unemployment insurance benefits to be able, available, and actively seeking work without restrictions. She is disqualified for the period August 15, 1993 and until meeting the requirements of the Law.

The determination of the Claims Examiner is modified.



F. A. Ward  
Hearing Examiner

### Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by September 16, 1993.

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

Date of hearing: August 20, 1993

dw/Specialist ID: 07217

Seq. No.: 002

Copies mailed on September 1, 1993 to:

LILLIAN I. SEFCIK

JOWETT INC

LOCAL OFFICE #07