

**- DECISION -**

Claimant:	Decision No.:	2151-BR-14
DEMARCUS P FRANKLIN	Date:	August 06, 2014
	Appeal No.:	1407470
	S.S. No.:	
Employer:	L.O. No.:	65
	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.

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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 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: September 05, 2014

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**REVIEW OF THE RECORD**

After a review on the record, the Board adopts the hearing examiner's findings of fact and conclusions of law. However, the Board modifies the penalty period.

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 09.32.06.02(E)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that he is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., § 8-903*. A claimant may not impose conditions and limitations on his 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 he 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 claimant was not meeting the requirement of the law due to the fact that he was attending college. However the claimant completed his college requirements in May, 2014 and therefore this is no longer a bar to his receipt of unemployment insurance benefits.

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 not meet his burden of demonstrating that he was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903 from the week beginning February 2, 2014 through the week ending May 17, 2014. The decision shall be modified for the reasons stated herein and in the hearing examiner's decision.

**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. The claimant is disqualified from receiving benefits from the week beginning February 2, 2014 through the week ending May 17, 2014.

Benefits are allowed from the week beginning May 18, 2014, so long as the claimant is meeting the other requirements of the law.

The hearing examiner's decision is modified.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

DEMARCUS P. FRANKLIN

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

DEMARCUS P FRANKLIN

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: 1407470

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

April 16, 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 filed for unemployment benefits during the week beginning February 2, 2014 with a weekly benefit amount of \$191.00. Since filing for benefits the claimant has made at least two job contacts each week and is actively seeking work in music education, retail and food service. The claimant, Demarcus Franklin, was denied benefits from the time he opened his claim.

The claimant attends classes from 9:00 a.m. to 12 noon on Monday, Wednesday and Friday as well as from 9:30 am to 12:15 and on Tuesday and Thursday. The claimant is in his final semester at Bowie State University and will graduate in May 2014. He previously worked in food service and was able to work his job schedule around his class schedule. The claimant is optimistic that he could receive some

accommodation from his instructors if he obtained full time work that conflicted with his class schedule. The claimant is unable or unwilling to drop his classes and cannot change all of them.

### **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.

Normally, a claimant attending day school does not meet the basic requirement of Md. Code Ann., Labor & Emp. Article, Section 8-903 that a claimant for unemployment insurance benefits must be available for work, without restriction. In the case of Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327 (1977), the U.S. Supreme Court held that "...attending school during daytime hours imposes a greater restriction upon obtaining full-time employment than does attending school at night. In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."

A claimant attending an educational institution does not normally meet the requirements of Md. Code Ann., Labor & Emp. Article, Section 8-903 which provides that a claimant for unemployment insurance benefits must be able, available and actively seeking work. School attendance normally operates as a substantial restriction upon availability for work.

However, a claimant for unemployment insurance benefits who is a student will not be disqualified from the receipt of benefits pursuant to Section 8-903 if he or she can demonstrate that he or she is genuinely attached to the work force, despite attendance at school. Student status is not disqualifying per se, but the claimant must demonstrate that he or she is primarily a worker who also goes to school, rather than a student who works. Drew-Winfield v. Patuxent Medical Group, 87-BH-87.

### **EVALUATION OF EVIDENCE**

The claimant had the burden to show, by a preponderance of the credible evidence, that he is able, available and actively seeking work within the meaning of the Maryland Unemployment Insurance Law. In the case at bar, that burden has not been met.

A claimant attending an educational institution does not normally meet the requirements of Md. Code Ann., Labor & Emp. Article, Section 8-903 which provides that a claimant for unemployment insurance benefits must be able, available and actively seeking work. School attendance normally operates as a substantial restriction upon availability for work.

Although the claimant testified that he could receive some accommodation for conflicts from his instructors he clearly would be unable to resolve all conflicts if his work schedule was at the same time and days as his class schedule. The claimant is unfortunately not considered to be meeting the conditions of eligibility under the Maryland unemployment law.

## 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 for the week beginning February 2, 2014 and until the claimant is fully able, available and actively seeking work without material restriction. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto: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 Examiner is affirmed.



P G Randazzo, 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 to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 May 01, 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: April 10, 2014

DW/Specialist ID: USB37

Seq No: 001

Copies mailed on April 16, 2014 to:

DEMARCUS P. FRANKLIN

LOCAL OFFICE #65

SUSAN BASS DLLR