



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
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BOARD OF APPEALS

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— DECISION —

Decision No.: 411-BR-85

Date: June 19, 1985

Claimant: Kim E. Bentz

Appeal No.: 12980

S. S. No.:

Employer: Pleasant View Nursing Home

LO. No.: 5

Appellant: CLAIMANT

Issue: Whether the claimant was able, available and actively seeking work within the meaning of §4(c) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

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

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON July 19, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee.

The claimant, a Licensed Practical Nurse, became pregnant in approximately October of 1984. Her doctor stated that she could continue to work, but that she could not lift over 40 pounds. The employer then placed the claimant on a maternity leave of absence from October 21, 1984 until she was able to return to work after the birth of her child, an event which was expected on May 12, 1985.

The claimant then began looking for other nursing jobs which did not require lifting 40 pounds. Upon the advice of the local office of the Department of Employment and Training, the claimant also began looking for other positions, such as bank teller, sales clerk or any other position. The claimant told prospective employers that she was keeping her options open but that nursing was her field, she intended to stay in that field and would return to that field after her baby was born.

A disqualification from the receipt of unemployment benefits may not be imposed on a woman who is required to leave work on account of her pregnancy. Brown V. Percher, 560 F.2d 1001 (1981). Any claimant, however, including a woman who left work due to pregnancy, must meet the requirements of §4(c) of the law that she is able to work, available for work and actively seeking work. Bowen v. Sheraton Fountainbleu (407-BR-83). The claimant in this case was certainly actively seeking work. The only restriction upon her availability was the fact that she preferred to remain in the nursing field and intended to return to her former job when her former employer permitted her to do so.

The Board has ruled in the past that where a claimant is otherwise available for and actively seeking work, no disqualification should be imposed on the claimant based solely on the fact that the claimant has accepted a job which is to begin in the future. Anderson v. Haven Lane (1355-BR-82). In this case, the claimant has been disqualified under §4(c) of the law solely because she intends to return to her former job when permitted to do so.

Section 4(c) of the law deals only with persons filing weekly claims for unemployment benefits, all of whom are presumably unemployed through no fault of their own. It would be inconsistent with the very purpose of the Unemployment Insurance law to require a claimant to forego any hope of employment or reemployment in the future in order to qualify for benefits under §4(c) of the law. It would also be inconsistent with the purposes of the law to disqualify from the receipt of benefits anyone who has a date certain to return to work. Yet these are exactly the effects of the Appeals Referee's ruling in this case.

Section 4(c) does not mandate a disqualification of those involuntarily laid off for a specific period who are seeking to become employed for this specific period. Neither is 4(c) meant to disqualify claimants on the grounds of "unavailability" for work solely because they honestly indicate to prospective employers the realities of their employment situation.

DECISION

The claimant was available for work and actively seeking work within the meaning of §4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law, based upon availability for work as the result of the claimant's desire to return to her former position.

The decision of the Appeals Referee is reversed.

Thomas W. Keech

Chairman

Gayle A. Marshall

Associate Member

K:W

kmb

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