

-DECISION-

Claimant:
JEFFREY MATHER

Decision No.: 744-BH-06

Date: April 26, 2006

Appeal No.: 0524061

Employer:
MCELROY TRUCK LINES INC

S.S. No.:

L.O. No.: 61

Appellant: Claimant

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: May 26, 2006

- APPEARANCES -

FOR THE CLAIMANT:
Present
Brian Maul-Atty

FOR THE EMPLOYER:
Jeff Ayres-Atty
Rudy Evans-Terminal Mgr.

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed full-time as an over the road truck driver for Mc Elroy Truck Lines. On August 23, 2005 the claimant was hospitalized in the intensive care unit being diagnosed with diabetes. The claimant was diagnosed with Insulin Dependent Type II Diabetes. When the claimant was discharged from the hospital he reported his condition to his employer. Federal law prohibits individuals that are diabetic and taking insulin from operating as commercial truck drivers. The employer had no other alternative than to terminate the claimant. The employer tried to find another position within the company other than as a commercial truck driver however, none could be found.

CONCLUSIONS OF LAW

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 has met his burden in this case and clearly is capable of returning to the workforce on a full time basis.

The claimant was never barred from full time employment. See claimant's Exhibit B2. The claimant is only barred from working as a commercial truck driver.

DECISION

IT IS HELD THAT the claimant is able to work, available for work and actively seeking work written the meaning of Md. Code Annotated Labor & Employment Article, Title 8 Section 9-3. Benefits are allowed from the week beginning October 30, 2005.

The decision of the Hearing Examiner is reversed.

Francis E. Sliwka, Jr., Associate Member



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Date of hearing: March 14, 2006

Copies mailed to:

JEFFREY MATHER
MCELROY TRUCK LINES INC
BRIAN M. MAUL ESQ.
JEFFREY P. AYRES ESQ.
MCELROY TRUCK LINES INC
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

JEFFREY MATHER

SSN #

Claimant

vs.

MCELROY TRUCK LINES INC

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: 0524061

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

January 17, 2006

For the Claimant : PRESENT , GINGER MATHER

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 first filed for benefits during the week beginning October 30, 2005. Since that time, he has made at least two job contacts each week while looking for full-time work. On or about August 23, 2005, the claimant was hospitalized as a result of circumstances directly tied to diabetes and his need for insulin to treat his type II diabetes. Pursuant to federal government guidelines, the claimant is no longer allowed to drive a truck while needing to take insulin. As such, he became unable to work for his employer. The claimant is continuing to look for work. The claimant has provided a physician's statement completed by Kelly Nguyen, M.D. regarding his current ability to work. The doctor indicated on that form that the claimant is not currently able to work. The claimant was asked by the Hearing Examiner to get clarification from the doctor since the claimant believed that he could work full-time in a capacity other than as a truck driver. The doctor's report clearly states that the claimant cannot return to work until "cleared by the

government.” There is no return to work date.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & 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.

EVALUATION OF EVIDENCE

The credible evidence presented at the hearing clearly shows that the claimant has a medical condition which prevents him from working in his former occupation. The claimant believes that he can work full-time in other fields. However, the physician statement prepared by his doctor clearly indicates otherwise. The doctor was specifically ordered by this Hearing Examiner through the claimant to indicate whether or not the claimant could work full-time, perhaps in a capacity other than a truck driver. The doctor only indicated that the claimant could not work presently and will not be able to work until cleared “by the government.” As such, the doctor’s physician statement only further confuses the matter and additionally calls into question whether or not the claimant can work in the capacity other than as a truck driver. Unless until the claimant can receive some sort of medical authorization to clear him to work in such capacities, benefits must be denied.

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 October 30, 2005 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.

M Franceschini, 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 to Petition for Review

Any party 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 February 01, 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: December 21, 2005
DW/Specialist ID: WCP2B
Seq No: 003
Copies mailed on January 17, 2006 to:
JEFFREY MATHER
MCELROY TRUCK LINES INC
LOCAL OFFICE #61
MCELROY TRUCK LINES INC