

- DECISION -

Claimant:	Decision No.:	00761-BR-18
MATTHEW MARKIEWICZ	Date:	August 29, 2018
	Appeal No.:	1803877
Employer:	S.S. No.:	
	L.O. No.:	01
	Appellant:	Claimant

Issue: Whether the claimant was actively seeking work within the meaning of MD Annotated 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: September 28, 2018

REVIEW OF THE RECORD

The claimant filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Division Decision issued on April 5, 2018. That Decision held the claimant was not engaged in an active work search and therefore ineligible for benefits, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-903*, from the week beginning January 28, 2018.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division hearing. The Board reviews the record *de novo* and may affirm, modify or reverse the hearing examiner's Findings of

Fact or Conclusions of Law on the basis of the evidence submitted to the hearing examiner or the evidence the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., §8-5A-10*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03 (E) (1)*. Only if there has been clear error, a defect in the record or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

The General Assembly declared, 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)*.

In this case, the Board thoroughly reviewed the record from the Lower Appeals Division hearing. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to present documentary evidence and to make a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing or to allow additional argument. Sufficient evidence exists in the record from which the Board may make its Decision.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. However, the Board concludes those facts warrant different Conclusions of Law and a Reversal of the hearing examiner's Decision.

Md. Code Ann., Lab. & Empl. Art., §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 the burden of demonstrating by a preponderance of the evidence that the claimant is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., §8-903*. A claimant may not impose conditions and limitations on her 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 Assn. Ltd. P'shp v. Babendreier, 146 Md. App. 1, 21 (2002)*.

An active work search is one of three elements of §8-903 which must be established in order for a claimant to be eligible for unemployment benefits. A claimant is expected to seek work diligently so as to return to gainful employment as soon as practical. A claimant is expected to seek work in field for which he or she has training, education, or experience and to seek work which he or she is willing and able to accept and perform. A claimant should actively seek work in those fields in which he is most likely to