

- DECISION -

Claimant:	Decision No.:	914-BR-12
CELESTE R GREENE	Date:	May 16, 2012
	Appeal No.:	1142259
	S.S. No.:	
Employer:	L.O. No.:	63
	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: June 15, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant only began her self-employment because she had been unsuccessful in securing other employment for a period of time. The claimant performs counseling services and works where and when she can secure clients. The claimant has actively sought employment in this same field since September of 2008, by making three or more job contacts nearly each week.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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 09.32.06.03(E)(1)*.

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 hearing examiner advised the claimant that he would keep the record open for five days following the conclusion of the hearing so that she could submit her work-search records. The claimant faxed multiple pages within that time frame, but there is no indication that the hearing examiner gave consideration to the job contacts provided by the claimant. The claimant's work-search records demonstrated that she has been actively seeking work throughout. The claimant's testimony showed that she was willing and able to accept suitable full-time employment. The claimant's testimony established that she was self-employed only because she could not secure other employment. The testimony demonstrated that she would cease accepting clients, personally, if she were offered employment.

The Board does not find the claimant's pursuit of self-employment to be a bar to her accepting full-time employment. She is engaged in this only because she has been unable to secure a job elsewhere. The claimant can cease her private counseling practice at any time she wishes. The claimant has actively sought appropriate work since her unemployment began. The Board is satisfied that the claimant has met the requirements of §8-903.

However, the Board notes that the claimant remains obligated to report any earnings from this self-employment for the week during which she earned any remuneration. The claimant is only entitled to benefits for weeks during which she has no earnings or earnings less than her weekly benefit amount.

The Board also 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 has met her burden of demonstrating that she was able, available, and actively seeking work within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be reversed for the reasons stated herein.

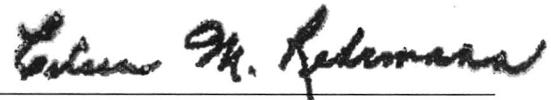
DECISION

The claimant is 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. Benefits are allowed from the week beginning September 28, 2008.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

RD

Copies mailed to:

CELESTE R. GREENE

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CELESTE R GREENE

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: 1142259

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

December 28, 2011

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 a claim for unemployment insurance benefits, establishing a benefit year effective June 1, 2008, with a weekly benefit amount of \$380. The Claim Specialist denied benefits the week beginning September 28, 2008 and until meeting the requirements of the law, because the claimant restricted being available for full-time work due to being self employed, contrary to the requirements in Maryland Code, Labor & Employment Article, Title 8, Section 903.

The claimant became self-employed as a mental health therapist on October 1, 2008. The claimant was unable to secure full-time employment so she started her own business. In 2009, the claimant earned \$18,500 and in 2010, she earned \$40,000. Despite her earnings from self employment, the claimant was

seeking other work.

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.

EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, that she was able to work, available for work and actively seeking work, during the period in question, as defined by Maryland Unemployment Insurance Law. In the case at bar, the claimant did not meet this burden.

The claimant's self employment is a material restriction on her availability for full-time work. She has substantial earnings. Based on the evidence presented, the claimant's self employment is a material restriction on the claimant's available for full-time work. Benefits are 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 September 28, 2008 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



C E Edmonds, 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

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 January 12, 2012. 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: December 17, 2011
DAH/Specialist ID: WCU42
Seq No: 001
Copies mailed on December 28, 2011 to:
CELESTE R. GREENE
LOCAL OFFICE #63
SUSAN BASS DLLR