



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer*  
Governor  
*Mark L. Wasserman*  
Secretary

*Board of Appeals*  
1100 North Eutaw Street  
Baltimore, Maryland 21201

Telephone: (410) 333-5032

*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

- D E C I S I O N -

	Decision No.:	2125-BR-93	
	Date:	Dec. 17, 1993	
Claimant:	Walter P. Kincer	Appeal No.:	9310402
		S.S. No.:	
Employer:		L. O. No.:	9
		Appellant:	CLAIMANT
Issue:	Whether the claimant was able, available and actively seeking work, within the meaning of §8-903 of the Labor and Employment Article.		

---

- 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 appeal can be found in many public libraries, in the Annotated Code of Maryland, *Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires                      January 16, 1994

---

- A P P E A R A N C E S -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board of Appeals adopts the Findings of Fact of the Hearing Examiner, but disagrees with the Conclusions of Law.

The Hearing Examiner concluded that the claimant "was not required to actively seek work" because his "approved training program relieved him of this responsibility." Although not stated in statutory terms, this is a conclusion that the claimant is engaged in "training with the approval of the Secretary" within the meaning of §8-903(e) of the Labor and Employment Article. The Board agrees with this conclusion of law. Under §8-903(c), a person in approved training is exempt from certain provisions of the law, including the provision that the claimant actively seek work. LE §8-903(C) (1).

The Board, however, disagrees with the Hearing Examiner's further conclusion of law. The Hearing Examiner concluded that, although the claimant was in approved training, the claimant was placing an undue restriction on his availability" and should be disqualified on those grounds. The reasoning behind this conclusion was that the claimant "was not totally in charge of his own life, his comings and goings, and was in effect not a totally free agent." In fact, the claimant was committed to a detention center, though he was free to pursue any training or employment at any hours between 7:30 a.m. and 11:00 p.m. In fact, the claimant continued in the same approved training program that he had engaged in prior to the commitment.

The Board disagrees with this second conclusion of law. Under §8-903(c), an individual in approved training is exempted from both the requirement of actively seeking work and the requirement of being available for work. The exemption includes:

(1) for failure to meet the requirements of subsection (a) (1) (i) and (iii) of this section to be available for work and actively seeking work; . . .<sup>1</sup>  
[Emphasis supplied]

Since the claimant has been found to be in approved training,

---

<sup>1</sup>It is true that the subsection regarding availability for work is numbered as (a)(I) (ii), a section which is not specifically referred to by citation in §8-903(c). The clear words of the exemption, however, apply to the availability for work. The discrepancy in the citation may be due to the code revision process. Prior to code revision, the exemption clearly applied to availability for work. See, former Article 95A, §4(C) .