

- DECISION -

Claimant:
SHERRIE L SALMON

Decision No.: 3025-BR-04

Date: October 13, 2004

Appeal No.: 0417012

S.S. No.:

Employer:
DEPT OF HEALTH

L.O. No.: 64

Appellant: Employer

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

- 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: November 12, 2004

REVIEW ON THE RECORD

The claimant was employed as a part-time health aide during the 2003-2004 school term. In June 2004, the claimant and the employer signed an agreement (dated May 12, 2004) for the claimant to return to work for the upcoming school year. *Employer's Exhibit 1*. The claimant admits that she believed that she would return to work on or about August 30, 2004 and in fact was planning to report to work at the beginning of the 2004-2005 school year.

Although the agreement contained a clause that provides that the agreement is void in the absence of funding, the agreement merely states the obvious. The Board takes official and judicial notice that all governmental positions are subject to funding. There is evidence that the claimant's position was indeed funded. *Employer's Exhibit 2*. The claimant had no reasonable basis upon which to believe that her job was not going to be funded for the subsequent academic year. Therefore, the Board finds that based on a preponderance of the credible evidence in the record, the claimant had reasonable assurance that she would return to work in the subsequent academic year within the meaning of Section 8-909.

The decision of the hearing examiner shall be reversed.

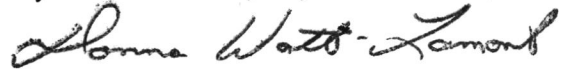
DECISION

The claimant had a reasonable assurance of working in an instructional capacity at the beginning of the next following academic term, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 909(a)(2) of the law. She is disqualified from the receipt of benefits based on service performed for the employer from June 27, 2004 through the week ending August 28, 2004.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Copies mailed to:
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