

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

	Decision No.:	382-BR-89
	Date:	May 11, 1989
Claimant:	Appeal No.:	8902226
	S. S. No.:	
Employer:	L. O. No.:	50
	Appellant:	CLAIMANT

Issue: Whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

June 10, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

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 claimant was denied benefits for a period of three weeks by the Hearing Examiner on the ground that he was unavailable for work. The basis for the conclusion of unavailability was the fact that the claimant's car was broken, limiting his availability for a job.

A claimant cannot be eligible for benefits unless he is available for work, within the meaning of Section 4(c) of the law. The Maryland Court of Appeals has ruled, however, that the mere lack of an automobile cannot, by itself, be conclusive evidence that a claimant is not available for work. Smith v. Employment Security Administration, 282 Md. 267, 383 A.2d 1108 (1978).

In any case, of course, the totality of circumstances can show that a claimant is not available for work. In this case, the Board concludes that the Hearing Examiner evaluated the totality of the circumstances incorrectly.

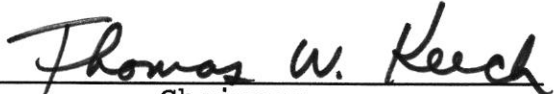
The Hearing Examiner placed considerable weight on the claimant's statements in the file. Although this was certainly not incorrect in itself, the Board notes that the claimant has some difficulty with the language and that the statements were apparently prepared for him by someone else. The statements seemed to have ignored the possibility of the claimant finding work in his own home town and concentrated on his unavailability for work 50 or more miles away. At the hearing, however, the claimant testified plainly that the fact that his car was broken did not limit him from searching for or being available for work in his own town.

Since the claimant cannot be penalized for the simple lack of an operating automobile, and since he was making efforts to find work in his town and was, in fact, available for such work, the Board concludes that the claimant was available for work during the three weeks in question.

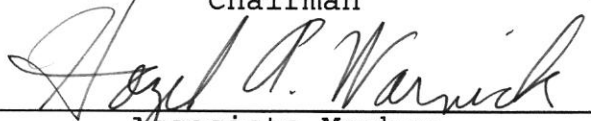
DECISION

The claimant was able to work and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law from January 29, 1989 through February 18, 1989.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

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CLAIMANT

OUT-OF-STATE CLAIMS