



# Maryland

Department of Economic &  
Employment Development

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Thomas W. Keech, Chairman  
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Donna P. Watts, Associate Member

**- DECISION -**

Decision No.: 1571-BR-93

Date: Sept. 23, 1993

Claimant: Sheryl G. Blue

Appeal No.: 9313000

S.S. No.:

Employer:

L. O. No.: 43

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.

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**- 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 **October 22, 1993**

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**- 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 question in this case is whether the claimant was able to work. The claimant had broken her small toe on May 28th, but it did not affect her ability to stand or to perform the type of work she normally performed. It did not stop her from actively seeking work, or from applying in person for unemployment benefits.

While the claimant was applying for unemployment benefits, a claim taker noticed that the claimant was wearing a surgical shoe. The claimant was then told that she must bring in a note from a doctor stating that she was able to work. The claimant protested that she was able to work, but she was told that she had to bring in the note.

The claimant did not bring in a note. She was disqualified, then she appealed the disqualification. At the appeals hearing, the claimant testified that she was, and had always been, able to work. She was questioned closely, however, only on the issue of why she had not brought in a doctor's note. The Hearing Examiner then disqualified the claimant because she did not bring in a doctor's note, and because he did not believe her given reasons for not having produced a note.

The Board reverses the decision of the Hearing Examiner. The Hearing Examiner's decision did not reach the issue in this case. The issue in this case is whether the claimant was able to work. The Hearing Examiner did not make a finding of fact on this issue. The Board of Appeals finds as a fact that the claimant was able to work from the beginning. She thus meets the requirements of §8-903 of the law, and the disqualification imposed will be lifted.

The Hearing Examiner's decision erred by stressing form over substance. The substantial issue in this case is whether the claimant was able to work. A doctor's note may be strong evidence on the issue, but the presence or absence of a doctor's note does not absolve the fact finder from making a judgment on the central issue.

In this case, the claimant's injury was so minimal that the requirement of producing a doctor's note was unreasonable. The law does not require or contemplate that apparently healthy people should be required to produce doctors' notes to verify that fact. To do so would place an onerous and unnecessary burden on those who are out of work and who need to devote their time to finding work again.