Maryland
Department of Economic & Employment Development

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

— DECISION —

Decision No.: 1625-BR-92

Date: Sept. 22, 1992

Claimant: Denise McDermott

Appeal No.: 92-CWC-293

S. S. No.:

Employer: Xelsen, Inc.

L. O. No.: 043

Appellant: CLAIMANT

Issue: Whether the claimant was able to work, available for work 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 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES October 22, 1992

— 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 disqualified for three weeks, the weeks ending January 4, 1992, January 11, 1992 and January 18, 1992. For the weeks ending January 4, 1992 and January 11, 1992, the claimant was temporarily ill and therefore unable to work.

She testified that as far as she knew, she was not offered any work during those two weeks. The employer was not present at the hearing and there is insufficient evidence to rebut the claimant's testimony. Therefore, the Board concludes that the claimant should have been allowed to file sick claims for those two weeks, under the provisions of Section 8-907 (a) of the Labor and Employment Article.

With regard to the last week in question, the week ending January 18, 1992, the claimant's uncontested testimony was that she did not seek work with the employer, a temporary employment agency, because she was seeking full time permanent work during that week. In the case Hannas v. Manpower, Inc., 478-BR-89, the Board discussed the ramifications of refusing an assignment from a temporary agency. Although the issue in that case was whether the claimant's refusal constituted a voluntary quit, some of the reasoning is applicable here. In that case, the Board stated that:

> the claimant was required to seek permanent employment as a condition of eligibility and was under no contractual obligation, express or implied, to reapply for short duration work . . . A claimant who accepts temporary work on an interim basis is not forever after bound to accept temporary assignments, on pain of losing her unemployment insurance benefits.

See also, Gallagher v. Goodfriend Temporaries (1774-BR-82) where a refusal of a temporary assignment in order to interview for a permanent job was considered a job refusal for good cause.

This case, of course, does not deal with the refusal of a job but with a decision not to contact a temporary agency for work during a specific week. Nevertheless, the Board concludes that the reasoning in Hannas is applicable here. Therefore, the Board concludes that the claimant, even though she did not contact this temporary agency for work during that week, was able and available for work for the week ending January 18, 1992. The Board notes again that the employer was not present to provide any testimony.

DECISION

The claimant was eligible to file sick claims for the weeks ending January 4, 1992 and January 11, 1992, within the meaning of §8-903 and §8-907 of the Labor and Employment Article. The claimant was able to work, available for work and actively seeking work, for the week ending January 18, 1992, within the meaning of §8-903 of the Labor and Employment Article.

The decision of the Hearing Examiner is reversed.

Associate Member

Chairman

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