



Maryland
Department of Economic &
Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
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- DECISION -

Claimant:	Decision No.:	2037-BR-93
JACQUELINE A. WHITTINGTON	Date:	December 2, 1993
	Appeal No.:	9314698
	S.S. No.:	
Employer:	L.O. No.:	45
	Appellant:	Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland Code, Labor and Employment Article, Title 8 Section 903.

- 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 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: January 1, 1994

REVIEW ON THE RECORD

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

The Hearing Examiner disqualified the claimant on the grounds of not being able to work and available for work based on the following two factors: (1) the doctor's note stated that the claimant was "able to work" but did not "establish" whether the pregnancy "restricts her availability to accept employment"; (2) the claimant was found not credible because she stated that she was four months pregnant on June 22nd and later stated that she was four to five months pregnant on September 2nd.

With respect to the first reason, the Board notes that a doctor's note usually reaches only the issue of ability to work. There is no reason to expect a doctor's note to establish a claimant's availability for work. With respect to the second reason, the Board notes that whether the claimant was accurate (or even truthful) about the length of time she had been pregnant is of little relevance. The medical documentation shows that she was able to work as of September 2nd.

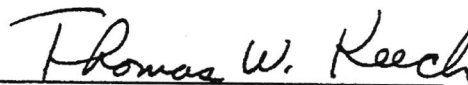
Since the Hearing Examiner found against the claimant on the issue of credibility, however, the Board will not credit the claimant's testimony that she was able to work prior to September 2nd, the date that her ability to work was established by medical evidence.

Since the claimant had child care available by July 30, 1993, this does not effect the claimant's availability for work after September 2, 1993.

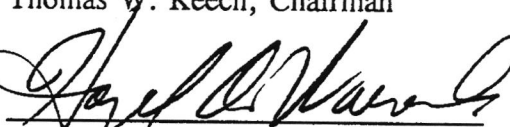
DECISION

The claimant was not able to work, within the meaning of Section 8-903 of the Labor and Employment Article, from May 30, 1993 through the week ending August 28, 1993. Beginning with the week beginning August 29, 1993, the claimant was able to work and available to work, and no penalty is imposed under Section 8-903 after that date.

The decision of the Hearing Examiner is modified.



Thomas W. Keech, Chairman



Hazel A. Warnick, Associate Member

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