

- DECISION -

Claimant:	Decision No.:	4024-BR-10
BRANDY M ROBINSON	Date:	October 04, 2010
	Appeal No.:	1021014
	S.S. No.:	
Employer:	L.O. No.:	63
BOARD OF EDUCATION CHARLES CO	Appellant:	Employer

Issue: Whether the claimant failed, without good cause, to apply for or to accept available, suitable work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1005.

- 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 03, 2010

REVIEW ON THE RECORD

After a review on the record, the Board of Appeals makes the following findings of fact and now based upon all the facts in evidence reverses the decision of the hearing examiner.

The claimant was working as a substitute teacher. She last worked for the employer on or about December 12, 2009 and was paid \$68.00 per day worked. Since the beginning of 2010 the employer has attempted to reach the claimant via an automated calling system. This system calls a potential substitute teacher in the early evening and/or early morning to let a substitute know that there is a teacher vacancy and, then, to respond to the call if the substitute is interested in working the vacancy. The Board of Education's calling

system placed 328 calls to the claimant. The claimant did not respond to any of the calls. The Board of Education also maintains a job search site that is accessible 24 hours a day. There is no record of the claimant accessing the site.

The claimant was offered suitable work and failed to accept it.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

An individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if it is found that the individual, without good cause, failed to accept suitable work when offered within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1005 (a)(2)*.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

In order to be hired as a substitute teacher, the claimant needed to respond to the automated telephone calls. The claimant did not respond to any calls between the beginning of the year and the date of the benefit appeal hearing.

The Board finds based upon a preponderance of the credible evidence that the claimant did not accept suitable work that was offered her within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1005* and is disqualified from receiving benefits. The decision of the hearing examiner shall be reversed for the reasons stated herein.

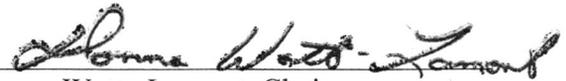
DECISION

It is held that the claimant failed, without good cause, to accept available, suitable work within the meaning of *Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1005*. The claimant is disqualified from receiving benefits from February 28, 2010 and until the claimant is re-employed and earns wages in covered employment that equal at least ten times their weekly benefit amount.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

BRANDY M. ROBINSON
BOARD OF EDUCATION CHARLES CO
SUSAN BASS DLLR
BOARD OF EDUCATION CHARLES CO
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

BRANDY M ROBINSON

SSN #

Claimant

vs.

BOARD OF EDUCATION CHARLES CO

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1021014

Appellant: Employer

Local Office : 63 / CUMBERLAND
CLAIM CENTER

June 28, 2010

For the Claimant:

For the Employer: PRESENT , JEREMY M. CAMPBELL

For the Agency:

ISSUE(S)

Whether the claimant failed to apply for or accept available, suitable work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 1005.

FINDINGS OF FACT

The claimant began working for this employer on or about April 15, 2008. At the time of separation, the claimant was working as a substitute teacher for which the claimant was paid \$68.00 per day worked. The claimant last worked for the employer on or about December 12, 2009.

The claimant had previously established an unemployment claim effective August 23, 2009 with a weekly benefit amount of \$91.00.

Since on or about January 1, 2010, the employer, via an automated calling system, attempted to reach the claimant several times regarding possible substitute teacher assignments. The employer did not make a bona fide offer of employment to the claimant. Instead the claimant was merely called by an automated telephone system indicating that a one day assignment was available.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article Section 8-1005 provides that a claimant may be disqualified from benefits where the claimant, without good cause, has failed to:

- (1) apply for available, suitable work when directed to do so;
- (2) accept suitable work when offered; or
- (3) return to usual self-employment when directed to do so.

Section 8-1005 states that the following factors shall be considered in determining whether work is suitable for an individual:

- (1) the degree of risk involved to the health, morals and safety of the individual;
- (2) the experience and previous earnings of the individual;
- (3) the previous training and physical fitness of the individual;
- (4) the length of unemployment and the prospects for securing local work in the individual's usual occupation; and
- (5) the distance of the available work from the individual's residence.

Section 8-1005 provides for a claimant's disqualification for a violation of its provisions. Such disqualification begins with the latest week in which the claimant was to have applied for work, was notified that suitable work was available, or was directed to return to self-employment, and continues for at least 5 but no more than 10 weeks or until the claimant becomes re-employed and has earned wages in covered employment that equal at least 10 times the claimant's weekly benefit amount. The duration of the penalty shall be governed by the factors cited above.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

In this case, it is determined that the employer did not communicate a job opening to the claimant. The claimant was contacted by an automated telephone system and told of a one day assignment with no other details of the nature of the work that would indicate a substantive job offer was being made. This offer is not considered suitable work because the length of employment was unspecified and no concrete offer was made.

It is further determined that the claimant's reason for failing to apply for or accept this work is supported by good cause.

Consequently, I find that the claimant did not fail to apply for or accept available, suitable work within the meaning of Md. Code Ann., Labor & Emp. Article Section 8-1005. No penalty under that section shall be imposed.

DECISION

IT IS HELD THAT the claimant did not fail to accept and/or apply for available, suitable work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 1005. No disqualification is imposed under this section of the law. The claimant is eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is affirmed.



C S Spencer, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right to Petition for Review

Any party may request a review either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by July 13, 2010. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : June 16,2010
CH/Specialist ID: WCU10
Seq No: 011
Copies mailed on June 28, 2010 to:
BRANDY M. ROBINSON
BOARD OF EDUCATION CHARLES CO
LOCAL OFFICE #63
SUSAN BASS DLLR
BOARD OF EDUCATION CHARLES CO