

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



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.:	252-BH-89
	Date:	April 5, 1989
Claimant: Rene Swafford	Appeal No.:	88-UCF-204
	S. S. No.:	
Employer: U.S. Postal Service	L. O. No.:	8
	Rm. 300 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 MAYBE 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.

May 5, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Rene Swafford - Claimant
Ana Zigel - Attorney

John T. McGucken, Legal Counsel

FOR THE EMPLOYER:

Deborah King - Comp.
Services Spec.

- D.E.E.D.

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The evidence in the record includes three different documents, all from the claimant's physician, regarding the claimant's ability to work. The most recent letter, submitted at the hearing before the Board of Appeals, has been admitted into evidence (Exhibit B-1). The Board notes, however, that this exhibit does not really add any new evidence to the case. While the Board has given weight to the physician's medical diagnosis, the Board does not attach significant weight to the physician's assessment regarding desk jobs and whether those type of jobs would be consistent with the claimant's medical condition.

At the hearing before the Board, the claimant's testimony regarding all the physician's notes was vague and inconsistent. She admitted that she visited her physician in July to obtain a medical note because it had been requested by her employer. When she went to her doctor, the doctor actually told her to go home, elevate her feet and to continue elevating her feet at least an hour or two every day throughout the course of the day. The claimant presented no evidence of jobs in her job classification that she could perform given the limitations placed on her by her physician. She also admitted that the employer did offer her some light duty on July 27, 1988 but she was unable to do the light duty offered by the employer.

FINDINGS OF FACT

The claimant was employed by the United States Postal Service for approximately three and one-half years, until on or about July 27, 1988, when she went on a leave without pay due to the fact that she was pregnant and was experiencing certain medical complications. The claimant was employed as a letter carrier.

On or about July 27, 1988, the claimant visited her physician. At that time, in a written note, the physician severely restricted the claimant's ability to do light duty work, requiring no heavy lifting or standing for extended periods of time. In addition, the physician told her to elevate her feet an hour or two every day. The claimant brought the

physician's note to her employer and requested light duty, but the only light duty that the post office had available was not sufficiently light to meet the restrictions placed on her by her physician. She went on a leave without pay and on the same day applied for unemployment insurance benefits.

The claimant's physician wrote another note on August 8, 1988, which was submitted to the employer, stating that the claimant could not work at all. The claimant continued to look for sedentary jobs at other places; she didn't tell any of the prospective employers that she couldn't stand for very long and had to elevate her feet throughout the day. It was the claimant's understanding throughout her pregnancy that her physician did not totally restrict her from work, but that the work had to be very sedentary and she had to be able to elevate her feet several times during the day. She looked for payroll or accounting work, and she looked in places such as Wendy's. The Board finds as a fact that the claimant was not able to perform the types of jobs that she was looking for given the medical limitations placed upon her by her physician, the limitations to which she herself testified. The Board also finds as a fact that the claimant's medical condition did not alter substantially from the time she first went on her leave until the time she gave birth, with the possible exception of one week where she had experienced some fluid leakage. The claimant admitted that her doctor told her to stay at home and stay off her feet from the very beginning. The claimant was able to work again without restriction on December 19, 1988.

CONCLUSIONS OF LAW

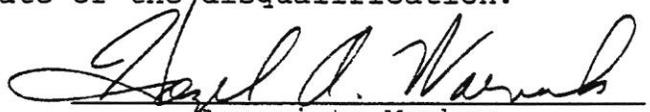
The Board concludes that the claimant was not able and available for work within the meaning of Section 4(c) of the law. In a case such as this, where severe limitations are placed upon a claimant's ability to work, she has the burden of showing not only that she was seeking work, but seeking work that she could do, given her limitations. The claimant has failed to do this in this case. She needed an extremely sedentary job where she could elevate her legs several hours a day. There is insufficient evidence of any jobs either in her classification or that she looked for, where she would be able to do this. Further, she admitted that her doctor told her to go home and stay off her feet. The various notes submitted by the doctor, which are somewhat vague and inconsistent, were apparently written at the claimant's request, to satisfy the requirements of the employer, first for light duty and then for a total leave of absence. The Board is more impressed by the claimant's own testimony regarding what the doctor told her, the limitations placed on her, and the kinds of jobs that

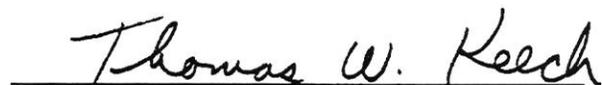
she looked for. She failed to show that she actively sought any jobs for which she was fit. See, Allgaier v. William T. Burnett Company, 22-BR-85 (where a claimant is unable to work in the type of position he is qualified for and actually seeking, he is not meeting the requirements of Section 4(c) of the law). See also, Reeder, 993-BR-85 (a claimant who is unable to perform his former work and through a combination of medical and vocational restrictions, is incapable of performing almost all the jobs which exist in the labor market, is not able and available for work under Section 4(c)). These cases are more relevant to the facts in this case than are the cases cited by the claimant's attorney in argument. This is not a case such as Randall v. Employment Security Administration, 5 Unempl. Ins. Rep (CCH) Md. Paragraph 8400, Superior Court of Bait. Cirty, 12/13/76, where a claimant was able to do other work but just could not do the former work that she was doing for the employer. Analyzing this case in light of the factors set out in Randall, the claimant has failed to show that she is able to work and available for work. Therefore, the decision of the Hearing Examiner is affirmed.

DECISION

The claimant was not able to work or available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning July 24, 1988 and until December 19, 1988 (when the claimant was able to return to work).

The decision of the Hearing Examiner is affirmed, except it is modified as to the ending date of the disqualification.


Associate Member


Chairman

HW:K

kbm

Date of Hearing: February 14, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ana Zigel, Esq.

UNEMPLOYMENT INSURANCE - ANNAPOLIS

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schafer
Governor

- DECISION -

Claimant: Rene C. Swafford
Employer: U. S. Postal Service
Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law.

Date: Mailed 10-4-88
Appeal No: 88-UCF-204
S.S. No.:
L.O. No.: 8
Appellant: Claimant

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION, ROOM 518, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON 10-19-88

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

Not Represented

FINDINGS OF FACT

The claimant was employed by the U. S. Postal Service for about three and one half years until July 27, 1988. She performed the services of a Letter Carrier and was earning \$25,700 annually during the latter part of this employment.

The claimant is pregnant and the expected date of birth is October 10, 1988. There are certain medical complications relating to her pregnancy. As a result of this, the claimant is unable to do any heavy lifting, she may not stand for extended periods of time, and she must have her legs in an elevated position for an hour or two every day. The claimant's physician

recommended that the claimant stay off of her feet as long as possible. There is in the record a letter from the claimant's physician which is dated August 3, 1988, and states that the claimant will be unable to work for the remainder of her confinement.

As a result of the claimant's physical condition and particularly the complications due to her pregnancy, the claimant had to stop working as a Letter Carrier and she is currently on a medical leave of absence at the U. S. Postal Service. Prior to going on the leave of absence, the claimant asked the U. S. Postal Service for light work within her physical capabilities but the only job openings were beyond the claimant's physical capabilities to perform.

The claimant filed an original claim for unemployment insurance benefits which became effective as of July 24, 1988. She has a Bachelors Degree from a university in computer programming, she has also had accounting training in college and also has work experience as an accountant. From and after the date of her original claim, the claimant has been seeking work within the limitations imposed by her physician.

The claimant is currently on an unpaid medical leave of absence for an indefinite duration from her position with the U.S. Postal Service.

CONCLUSIONS OF LAW

Section 4(c) of the Maryland Unemployment Insurance Law provides that as a condition of eligibility for the receipt of unemployment insurance benefits, an individual must be able to work, available for work, and actively seeking work. This Statutory provision is construed to mean that the claimant must be ready, willing, and able to accept employment without limitations or restrictions that would tend to significantly prolong the period of unemployment.

In the instant case, as a result of the claimant's physical condition attributable to her pregnancy and certain medical complications related to the pregnancy, the claimant was unable to perform the work that she had and no other work was available for her within her physical limitations. As a result of her physical condition, the claimant needs work that is not only sedentary but with the additional requirement that the duties are such as to enable the claimant to elevate her legs for an hour or more during the work day. Moreover, the claimant has been advised by her physician to avoid standing to the extent possible

and she has been further advised not to work. In consideration of the foregoing, and the Findings of Fact above, the claimant's work restrictions are such that she does not meet the qualifications for entitlement to benefits under the provisions of Section 4(c) of the Maryland Unemployment Insurance Law.

DECISION

The claimant is not able, available for work and actively seeking work within the requirements of Section 4(c) of the Law. Benefits are denied under the provisions of Section 4(c) of the Law from July 24, 1988 (the effective date of the claimant's original claim for unemployment insurance benefits) through September 14, 1988 (the date of this hearing) and thereafter until the claimant meets the availability requirements of Section 4(c) of the Law.

The determination of the Claims Specialist is affirmed.



Bernard Streett
Hearing Examiner

Date of Hearing: 9-14-88
sk
5304/Specialist ID: 08006
Copies mailed on 10-14-88 to:

Claimant
Employer
Unemployment Insurance - Annapolis (MABS)