



*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032*

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

— DECISION —

	Decision No.:	986-BR-90
	Date:	October 4, 1990
Claimant: <u>Caren Spence</u>	Appeal No.:	9009638
	S. S. No.:	
Employer:	L O. No.:	2
	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.

November 3, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 in this case is not available for night work, because of serious personal reasons. The question is whether this disqualifies her from benefits under Section 4(c) for being unavailable for work.

The Hearing Examiner cited the correct standard of law, derived from the Cox v. American Graphic Arts case (812-BH-81). Under this standard, it is necessary to determine the usual and customary working hours in a claimant's trade. The Hearing Examiner, however, limited consideration of the claimant's "trade" to her last job.

The claimant in act has had many jobs, and is classified as both a splicer¹ and an electronic technician. Her job experience includes not only photographic production work but also installing fire alrms, working in a sheet metal shop , office work, working as an expediter (obtaining governmental permits, etc.) and as equipment manager in a fire department.

She is applying for a wide variety of jobs at a wide variety of companies. Considering that she also has a wide variety of experience, the Board concludes that it would be inappropriate, in the circumstances of this case, to consider the claimant's last job² as her "trade," and to consider the limitations she put on her hours as ruling out too many jobs of that "trade." The claimant's experience and her job search are both sufficiently broad that the limitations she has placed on her hours were reasonable, since it appears that most of the types of jobs to which she applied are conducted in the day time.

The evidence in this case, both from the claimant and the agency witness, was somewhat vague. The Board has given the claimant the benefit of the doubt with respect to her job history and job search. The claimant's actions do seem reasonable, especially in light of the medical problems she experienced in her previous employment.³ Her hourly limitations seem reasonable in light of the range of jobs she is qualified for and is actually seeking.⁴

¹The evidence does not show exactly what a "splicer" is. The claimant testified that she had been a "pre-splicer."

²The Board also notes that the claimant had an exposure to a chemical spill on her last job, and that this problem has limited her work in this type of employment.

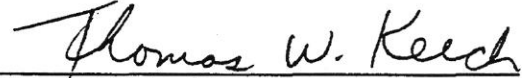
³See, footnote 2, supra. In making this decision, the Board has also considered the tape of the hearing in the claimant's separation case, no. 9009638.

⁴The Board finds no merit whatsoever in the claimant's contention that the Hearing Examiner cut off her answers or turned off the tape during the hearing.

DECISION

The claimant was available for work, within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. No penalty is imposed based upon her limitations of her hours, under Section 4(c) of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - GLEN BURNIE



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	Caren C. Spence	Date:	Mailed: 8/17/90
		Appeal No.:	9009638
		S. S. No.:	
Employer:		L.O.No.:	002
		Appellant:	Claimant

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515 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 September 4, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Other: Vicki Graves, Claims Specialist

FINDINGS OF FACT

The claimant was employed by District Photo and had worked as a splicer. She had worked several shifts, mostly from 2:00 p.m. to 11:00 p.m. and also the night shift and also in the daytime.

The claimant filed a claim for benefits effective June 17, 1990. The claimant when filling out an Eligibility Review and Re-employment Assistance Questionnaire, which she submitted to the Agency at the time of filing her claim. In answer to question "Can you work all hours, days and shifts required in the type of work you are seeking?" The claimant indicated, no, stating day shift only, 6 to 2, 7 to 3, 8 to 4, 9 to 5, 8 hours a day, Monday through Friday, and a 40 hour week. In answer to the question "If no, why? To properly care and be there for my thirteen year old. "


CONCLUSIONS OF LAW

In the case of Cox v. American Graphics Arts, 812-BH-81, the Board of Appeals held in determining whether a claimant who places restrictions on hours of availability is available for work, within the meaning of Section 4(c) of the Law it is necessary to determine the usual and customary working hours of person in the claimant's trade. Under this standard, the claimant typesetter who is primarily interested in work between 7 a.m. and 5 p.m. is available for work since the evidence shows that work hours required in this trade are daytime hours.

In the case at hand, the claimant was required to work hours other than day, late evening shift from 2:00 a.m. to 11:00 p.m. and also sometimes the night shift. Since she will not accept jobs on the late evening shift or the night shift because she wants to care for her child, it is concluded that she is placing restrictions on her availability and is thus not eligible for benefits. The determination of the Claims Examiner will be affirmed, within the provisions of Section 4(c) of the Law.

DECISION

The determination of the Claims Examiner that the claimant was not eligible for benefits, within the meaning of Section 4(c) of the Law, is affirmed. Benefits are denied from the week beginning June 17, 1990 until August 10, 1990, the date of the hearing, and thereafter until all eligibility requirements are met.



John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: August 10, 1990
lr/Specialist ID: 02417
Cassette No: 5823
Copies mailed on August 17, 1990 to:

Claimant
Unemployment Insurance - Glen Burnie (MABS)