

- DECISION -

Claimant:
ANTIONNE L HUDSON

Decision No.: 1564-BR-08

Date: July 10, 2008

Appeal No.: 0809663

S.S. No.:

Employer:
SYSTEMS SPEC FURN INSTALL INC

L.O. No.: 64

Appellant: Claimant

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: August 11, 2008

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact but reaches a different conclusion of law.

Two of the § 8-1005 statutory factors germane to the Board's decision are: (a) the length of unemployment and the prospects for securing local work in the individual's occupation; and (b) the distance of the available work from the individual's residence.

The claimant was only unemployed for about four weeks when the offer of work was made. The offer of work was temporary and not permanent in nature. The offered position was not located near the claimant's residence in Baltimore, but out-of-state in New York City. The Board finds that this was not a suitable offer of work for the claimant.

The Board finds that the facts of this case support a finding that the claimant had good cause for failing to accept this offer of work. Therefore, no penalty shall be assessed.

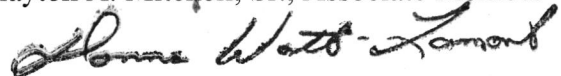
DECISION

It is held that the claimant did not fail without good cause, to accept available, suitable work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1005. No disqualification is imposed under this section of law. Benefits are allowed.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

Copies mailed to:

ANTIONNE L. HUDSON

SYSTEMS SPEC FURN INSTALL INC

SUSAN BASS

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ANTIONNE L HUDSON

SSN #

Claimant

vs.

SYSTEMS SPEC FURN INSTALL INC

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: 0809663

Appellant: Claimant

Local Office : 64 / BALTOMETRO
CALL CENTER

May 30, 2008

For the Claimant : PRESENT , TAWANDA MCGEE

For the Employer :

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 October 4, 2004. At the time of separation, the claimant was working as an installer for which the claimant was paid \$15 per hour. In that position, the claimant served a territory that went as far south as Washington DC/northern Virginia, which would allow the claimant to come home from work every night. The claimant last worked for the employer on or about February 22, 2008.

The claimant subsequently established an unemployment claim effective February 24, 2008 with a weekly benefit amount of \$330.

On or about March 24, 2008, the employer asked the whether he wanted to work as an installer for which he would be paid \$15 per hour. The claimant refused this job because it was located in New York City, where

he would stay for overnight for four consecutive days (it was a temporary position), and he preferred not to go there because he felt he needed more than one day's notice.

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

A claimant who is terminated, is eligible for benefits unless it is established, by a preponderance of the evidence, that his termination was due to misconduct. In the case at bar, this burden has met.

In this case, it was adequately proven that the job that he was offered was available and suitable, but that the claimant refused it because it differed from his previous position in that (a) it was out of town, albeit only for four days, and (b) the claimant was unhappy that he was not given sufficient notice (he was only given one day).

In light of all of the above, a penalty under Section 8-1005 is warranted, and the lowest (i.e., shortest) penalty shall be imposed.

DECISION

IT IS HELD THAT the claimant failed without good cause, to apply for and/or accept available, suitable work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1005. The claimant is disqualified from receiving benefits for the week beginning March 23, 2008 and for the four weeks immediately following. 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 modified.



D. Sandhaus, 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 of Further Appeal

Any party may request a further appeal 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 June 16, 2008. 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

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

Date of hearing: May 19, 2008

DW/Specialist ID: RBA4A

Seq No: 001

Copies mailed on May 30, 2008 to:

ANTIONNE L. HUDSON

SYSTEMS SPEC FURN INSTALL INC

LOCAL OFFICE #64

SUSAN BASS