

***-CORRECTED DECISION-***

Claimant:  
ELIZABETH A SMART

Decision No.: 1566-BH-03

Date: April 16, 2004

Appeal No.: 0226132

Employer:  
KID'S PLACE INC

S.S. No.:

L.O. No.: 60

Appellant: Employer

Issue: Whether the appealing party filed a timely appeal within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 806 and/or COMAR 09.32.06.01B(4).

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.

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**- 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: May 16, 2004

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**- APPEARANCES -**

FOR THE CLAIMANT:  
Not Present

AGENCY  
Not Present

FOR THE EMPLOYER:  
Mark Rosenberg, President

## **CORRECTED DECISION**

The Board of Appeals reopens this case to correct the decision issued on June 9, 2003. The decision paragraph was incomplete.

The Board of Appeals corrects the Decision paragraph of the prior decision to read:

### **DECISION**

It is held that the claimant failed without good cause to apply for and/or 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 for the week beginning *August 25, 2002* and for the *nine weeks* immediately following.

### **EVALUATION OF THE EVIDENCE**

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The Board notes that the claimant, duly notified of the date, time, and place of the hearing, failed to appear. The Board finds the employer credible.

### **FINDINGS OF FACT**

The employer filed a timely appeal on October 9, 2002.

The claimant was on an approved leave of absence through August 26, 2002. The claimant was offered a job within her job description at one of the employer's facilities within 15 minutes driving time of the claimant's residence. The employer offered the claimant this position at a different facility than the one at which the claimant originally worked. The claimant and the employer had legitimate concerns of the claimant's estranged ex-husband causing a disturbance at her former place of employment. Although the position offered at the other site was an equivalent position, the claimant did not accept this position with the employer. The Board finds that the claimant did not have good cause for refusing this job.

### **CONCLUSIONS OF LAW**

Section 8-806 provides that: Determination of claims.

(e) *Finality of determination.* – (1) A determination is final as to a claimant and an employer who is entitled to notice of the determination unless:

- (i) within 15 days after the mailing or other delivery of the notice, the claimant or employer appeals the determination; or
- (ii) after the time for an appeal on an initial determination has passed, the Secretary may make a redetermination under subsection (f) of this section.

(2) The Board of Appeals, for good cause, may extend the time for an appeal under this subsection.

Section 8-1005 provides that: Failure to apply for or accept suitable work.

(a) *Grounds for disqualification.* – Subject to subsection (d) of this section, an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the Secretary finds that the individual, without good cause, failed to:

- (1) apply for work that is available and suitable when directed to do so by the Secretary;
- (2) accept suitable work when offered; or
- (3) return to the individual's usual self-employment when directed to do so by the Secretary.

The evaluation of the evidence and findings of fact are incorporated herein by reference. The Board finds that based upon a preponderance of the credible evidence, the employer filed a timely appeal on October 9, 2002. Therefore, the Board may reach a decision on the underlying merits of this case.

The Board finds that based upon a preponderance of the credible evidence, the claimant failed, without good cause, to accept available suitable work within the meaning of Section 8-1005.

### DECISION

IT IS HELD THAT the employer filed a timely appeal with good cause, within the meaning and intent of Md. Code Ann., Labor & Emp. Article, Section 8-806(e).

It is held that the claimant failed without good cause to apply for and/or 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 for the week beginning **August 25, 2002** and for the **nine weeks** immediately following.

Therefore, decision of the claims examiner shall be reversed.

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Clayton A. Mitchell, Sr., Associate Member

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Francis E. Sliwka, Jr., Associate Member

Date of hearing: May 20, 2003

Copies mailed to:

ELIZABETH A. SMART  
KID'S PLACE INC  
Michael Taylor, Agency Representative

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ELIZABETH A SMART

SSN #

**Claimant**

vs.

KID'S PLACE 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: 0226132

Appellant: Employer

Local Office : 60 / TOWSON CALL  
CENTER

November 27, 2002

**For the Claimant : PRESENT**

**For the Employer : PRESENT , MARK ROSENBERG, ERIKA DAVIS**

**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. Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

**FINDINGS OF FACT**

The local office mailed copies of a benefit determination to the parties in this case. The determination had an appeal deadline of October 9, 2002. In this case, the appeal was postmarked on October 11, 2002. The employer offers as a reason for the late appeal that it went to the Bethesda Post Office located at 6917 Arlington Road on October 9, 2002 at approximately 3:00 to 4:00 pm and put the letter of appeal in a mailbox outside the post office.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. COMAR 09.32.06.02B provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any local employment office, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date, shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.06.01B(3) provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. Francois v. Alberti Van & Storage Co., 285 Md. 663 (1979) and Matthew Bender & Co. v. Comptroller of the Treasury, 67 Md. App. 693 509A 2d 702 (1986).

There is rebuttable presumption in law that a letter properly posted will be delivered to the address in due course. Border v. Grooms, 267 Md. 100 (1972).

## EVALUATION OF EVIDENCE

Since the last day to appeal the case was October 9, 2002 and the employer filed an appeal that was postmarked October 11, 2002, it will be held that the appeal was filed late without good cause under Section 8-806 of the law. In the instant case, the employer filed a late appeal which does not constitute good cause under Section 8-806.

## DECISION

IT IS HELD THAT the employer filed a late appeal without good cause, within the meaning and intent of Md. Code Ann., Labor & Emp. Article, Section 8-806(e).

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MI Pazornick, 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 410-949-0022 or 1-800-827-4839. 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.**

**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 December 12, 2002. 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 : November 12,2002

LDW/Specialist ID: UTW35

Seq No: 002

Copies mailed on November 27, 2002 to:

ELIZABETH A. SMART

KID'S PLACE INC

LOCAL OFFICE #60