

**- DECISION -**

Claimant:	Decision No.:	1834-BR-14
COURTNEY R CARTER	Date:	July 25, 2014
	Appeal No.:	1401527
	S.S. No.:	
Employer:	L.O. No.:	65
ALLIEDBARTON SECURITY SERVICES	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.

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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: August 24, 2014

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**REVIEW OF THE RECORD**

After a review of the record, and after deleting "or about" from the first and third sentences of the first paragraph and the first sentence of the third paragraph, the Board adopts the hearing examiner's modified findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Section 8-1005 of the Labor and Employment Article provides that 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;

- i. apply for work that is available and suitable when directed to do so by the Secretary;
- ii. accept suitable work when offered; or
- iii. return to the individual's usual self-employment when directed to do so by the Secretary.

In her appeal, the claimant reiterates her testimony from the hearing concerning the medical issues which impacted her decision to decline the offered position. The claimant properly notes that the employer was aware of her medical condition and so stated during the course of the hearing. The claimant otherwise does not cite to the evidence of record and makes no other contentions of error.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing. The Board disagrees with the hearing examiner's decision in this matter. The claimant offered a genuine and substantiated reason for declining the offer of work. The claimant's evidence established that she had good cause to refuse this assignment. The work was suitable for the claimant, but the working conditions, without another person present, were not appropriate for the claimant given her medical concerns. Even though the claimant's health had shown some improvement, she was uncomfortable working alone. This was a reasonable concern under these circumstances.

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.

The Board finds based upon a preponderance of the credible evidence that the employer did not meet its burden of demonstrating that the claimant failed to apply for or accept available, suitable work within the meaning of *Md. Code Ann., Lab. & Empl. Art. §8-1005*. The decision shall be reversed for the reasons stated herein.

### 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 Hearing Examiner's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

COURTNEY R. CARTER  
ALLIEDBARTON SECURITY SERVICES  
SUSAN BASS DLLR  
ALLIEDBARTON SECURITY SERVICES  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

COURTNEY R CARTER

SSN #

**Claimant**

Vs.

ALLIEDBARTON SECURITY SERVICES

**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: 1401527

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

February 21, 2014

**For the Claimant: PRESENT**

**For the Employer: PRESENT, LINDA COPELAND**

**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, Courtney R Carter, began working for this employer, Allied Barton Security Services, on or about February 9, 2009. At the time of separation, the claimant was working as a security officer for which the claimant was paid \$12 per hour. The claimant last worked for the employer on or about November 27, 2013.

The claimant subsequently established an employment claim effective December 1, 2013 with a weekly benefit amount of \$217.00.

On or about December 2, 2013, the employer offered the claimant full-time security work at the McCormick Building. The assignment was Mondays through Fridays from 12:30 a.m. to 8:30 a.m., and paid \$11.50 per hour. She worked the shift alone.

The refused the offer because she wanted a post with other people. When the offer was made, the claimant had medical issues. She was having asthma flare-ups and high blood pressure was not under control. She wanted to work a shift with others in the event she had a medical flare-up and needed someone's help.

### **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.

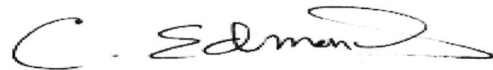
In this case, it is determined that the employer did make the claimant a bona fide assignment on December 2, 2013 which the claimant rejected.

The claimant verified her health issues when the offer was made. Since then the claimant health has improved. Despite her medical problems, the claimant's explanation for not accepting the assignment does not constitute good cause. However, the claimant's explanation cannot be ignore. Therefore, a brief penalty is imposed and afterwards, benefits are allowed provided the claimant meets other provisions of the law.

## 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 December 1, 2013 and for the four (4) weeks immediately following. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto: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.



C E Edmonds, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 March 10, 2014. 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: February 12, 2014

AEH/ceh/Specialist ID: RWD2M

Seq No: 003

Copies mailed on February 21, 2014 to:

COURTNEY R. CARTER  
ALLIEDBARTON SECURITY SERVICES  
LOCAL OFFICE #65