

- DECISION -

Claimant:
PAMELA MEYER

Decision No.: 544-BR-14

Date: April 30, 2014

Appeal No.: 1331516

S.S. No.:

Employer:

L.O. No.: 64

Appellant: Claimant

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland Code, Labor and Employment Article, Title 8 Section 903.

- 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 30, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the first paragraph of hearing examiner's findings of fact. The Board deletes the second paragraph and makes its own findings of fact:

The claimant's usual occupation is as a registered nurse. Due to some prior physical limitations, the claimant cannot work as a bedside nurse because she cannot lift patients. The claimant has not, in fact, worked as a full bedside nurse for about 9 years (*see Claimant's Exhibit #2*). The claimant also cannot work evening or over-night shifts because disruptions in her sleep pattern worsens her pre-existing depression (*see Claimant's Exhibit #1*).

The claimant has worked for many years as a registered nurse without performing bedside duties. The claimant is seeking a variety of nursing position of a similar nature. Many nursing positions do not require bedside duties. The claimant is available for all day-time positions and has no other restrictions of her availability.

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)*.

The claimant has the burden of demonstrating by a preponderance of the evidence that he is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., § 8-903*. A claimant may not impose conditions and limitations on his willingness to work and still be available as the statute requires. *Robinson v. Md. Empl. Sec. Bd, 202 Md. 515, 519 (1953)*. A denial of unemployment insurance benefits is warranted if the evidence supports a finding that the claimant was unavailable for work. *Md. Empl. Sec. Bd. v. Poorbaugh, 195 Md. 197, 198 (1950)*; compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1, 21 (2002)*.

A claimant should actively seek work in those fields in which he is most likely to obtain employment. *Goldman v. Allen's Auto Supply, 1123-BR-82*; also see and compare *Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1 (2002)*.

The term "available for work" as used in § 8-903 means, among other things, a general willingness to work demonstrated by an active and reasonable search to obtain work. *Plaugher v. Preston Trucking, 279-BH-84*. A claimant need not make herself available to a specific employer, particularly when the employer cannot guarantee her work, in order to be available as the statute requires. *Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1, 22 (2002)*.

Section 8-903 provides that a claimant must be able to work, available to work, and actively seeking work in each week for which benefits are claimed.

In a supplement to her appeal, the claimant reiterates much of her testimony from the hearing. She notes

she has expanded her job search and includes documentation. The claimant otherwise does not cite specifically 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. The claimant appeared and testified. 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. Because the issue in this case was not whether the claimant was actively seeking work, the Board will not consider the documents submitted with the claimant's appeal supplement. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner's decision. The hearing examiner erred in utilizing the claimant's physical limitations in his analysis of her availability for work. Those limitations properly would be considered only if the issue was the claimant's ability to work. Further, the Board finds the claimant has amply demonstrated her ability to work, having done so, within her restrictions, for about 9 years.

The issue in this case was whether the claimant was available for work as required to maintain eligibility for benefits. The factual issue, set forth in the benefit determination, was whether the claimant's self-limitation to day-time hours rendered her unavailable for work under the law.

The hearing examiner found the claimant was unduly restricting herself to non-bedside positions, and only during day-time hours. The Board does not find this to be an undue restriction. The claimant is available to work any day-time position in the nursing profession, which does not involve full bedside duties. As the claimant established in her testimony, there are many, varied positions for this type of nursing. And, as she demonstrated, she is available for any of those which might be offered to her.

The Maryland Unemployment Law does not require a claimant to be available for work all hours of all days of the week. The law requires a claimant to be available during hours the work she seeks is offered. Nursing positions suitable to the claimant's training, education, experience, and ability are offered all hours of all days, and the claimant is fully available during daytime hours.

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 claimant has met her burden of demonstrating that she was able, available, and actively seeking work, effective September 29, 2013, within the meaning of *Robinson v. Md. Empl. Sec. Bd.*, 202 Md. 515 (1953) and §8-903. The decision shall be reversed for the reasons herein stated.

DECISION

The claimant is able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. Benefits are allowed from the week beginning September 29, 2013.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KJK

Copies mailed to:

PAMELA MEYER

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

PAMELA MEYER

SSN #

Claimant

vs.

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: 1331516

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

November 22, 2013

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant is able, available for work and actively seeking work within the meaning of the MD Code Annotated, Labor and Employment Article, Title 8 Sections 903 and 904; and/or whether the claimant is entitled to sick claim benefits within the meaning of Section 8-907.

FINDINGS OF FACT

The Claimant, Pamela Meyer, filed for unemployment insurance benefits establishing a benefit year effective September 29, 2013 with a weekly benefit amount of \$430.00.

Since opening her claim for benefits, the claimant has been seeking work as a registered nurse, for which the customary hours of employment are all hours. With respect to whether the claimant has any restrictions on her availability to perform work, the claimant is unable to work evening or night shifts because she suffers from depression which is caused by an interruption to her sleep cycle. She has provided a note from her psychiatrist confirming the claimant cannot work evenings or night shifts. Claimant also testified that she had a right shoulder repair in 2005 and had a metal plate inserted into neck. As a result she cannot lift patients and perform many direct patient care functions. Claimant is limiting her search to a clinic type setting or one that does not require the normal patient care functions.

CONCLUSIONS OF LAW

Md. Code Ann., Labor of Emp. Article, Section 8-903 provides that a claimant for unemployment insurance benefits shall be (1) able to work; (2) available for work; and (3) actively seeking work. In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant may not impose restrictions upon his or her willingness to work and still be available as the statute requires.

EVALUATION OF EVIDENCE

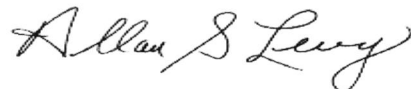
The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence that she is in compliance with Agency requirements. In the case at bar, that burden has not been met. Accordingly, a disqualification is warranted and benefits will not be allowed for those weeks in which the claimant demonstrated a material restriction upon availability for work, as discussed above.

DECISION

IT IS HELD THAT the claimant is not fully able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are denied for the week beginning September 29, 2013 and until the claimant is fully able, available and actively seeking work without material restriction.

The determination of the Claims Specialist is affirmed.



A S Levy, 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 to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 09, 2013. 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 : November 12,2013
TH/Specialist ID: RBA11
Seq No: 001
Copies mailed on November 22, 2013 to:

PAMELA MEYER
LOCAL OFFICE #64
SUSAN BASS DLLR