

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DEBRA J BYRNES
Claimant

APPEAL NO. 16A-UI-08132-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 06/26/16
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Debra Byrnes filed a timely appeal from the July 19, 2016, reference 02, decision that denied benefits effective June 26, 2016, based on an agency conclusion that she was unable to work due to illness. After due notice was issued, a hearing was held on August 11, 2016. Ms. Byrnes participated. Michael Wilkinson, Human Resources Business Partner, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

ISSUES:

Whether Ms. Byrnes has been able to work and available for work within the meaning of the law since she established the claim for unemployment insurance benefits that was effective June 26, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Debra Byrnes separated from part-time employment with Mercy Hospital in Iowa City on or about April 6, 2016. Ms. Byrnes had started the employment in April 2015. Ms. Byrnes is a registered nurse and obtained her nursing license in 1982. Ms. Byrnes has a master's degree in health administration. At Mercy Hospital, Ms. Byrnes worked as a staff nurse in the intensive care unit. Mr. Byrnes' regular scheduled work hours were 7:00 a.m. to 7:00 p.m., Saturday and Sunday.

Ms. Byrnes suffers from Meniere's Disease and her separation from Mercy Hospital occurred in the context of that medical condition. Ms. Byrnes describes the illness as interruption of flow through her vestibular system from the cochlea on down. The illness is progressive and has resulted in Ms. Byrnes becoming deaf in her left ear. Ms. Byrnes' medical condition includes debilitating episodes of severe nausea, vomiting and dizziness that can last three to five hours. On April 22, 2016, Dr. Bruce Gantz, M.D., performed surgery on Ms. Byrnes that was intended to decrease her nausea and vomiting symptoms. The surgery procedure eliminated the vomiting. Ms. Byrnes' ongoing symptoms include balance and mobility issues that necessitate use of a walker. Ms. Byrnes avoids driving due to her medical condition, but maintains a driver's license. Ms. Byrnes feels she could drive a couple blocks in the event of an emergency.

Ms. Byrnes had a follow up appointment with Dr. Gantz on May 24, 2016. At that time, Ms. Byrnes discussed with Dr. Gantz her intention to begin looking for new employment. Ms. Byrnes anticipated that Dr. Gantz would provide her with a written medical release.

Ms. Byrnes established a claim for unemployment insurance benefits that was effective June 26, 2016. Ms. Byrnes made weekly claims for the weeks that ended July 2, July 9 and July 16, 2016. Ms. Byrnes established the claim and commenced her work search in the absence of medical documentation from Dr. Gantz indicating that she was able to return to work. During the week of June 26 through July 2, 2016, Ms. Byrnes applied for a call center and bed placement center position at the University of Iowa Hospitals Clinics. Ms. Byrnes also applied for a part-time outpatient clinical nursing position at the Veterans Administration Hospital. During week of July 3-9, 2016, Ms. Byrnes applied for an admission and transfer center position at the University of Iowa Hospitals and Clinics. Ms. Byrnes also applied for a part-time "prn" nursing position at the Veterans Administration Hospital. During the week of July 10-16, 2016, Ms. Byrnes applied for a position at a referral center at the University of Iowa Hospitals and Clinics. This was a position that Ms. Byrnes had applied for within the preceding two weeks. Ms. Byrnes learned on July 14 or 15 that the position required a master's degree in nursing. Ms. Byrnes also applied for another "prn" clinical nursing position at the Veterans Administration Hospital. Ms. Byrnes discontinued her weekly unemployment insurance claims after the week that ended July 16, 2016.

On July 12, 2016, Michael Wilkinson, Mercy Hospital Human Resources Business Partner, sent Ms. Byrnes a letter inviting her to contact Mercy Hospital regarding potential employment. Ms. Byrnes did not respond to the letter and did not make contact with Mercy Hospital regarding possible employment.

On July 23, 2016, Dr. Gantz completed a document regarding Ms. Byrnes' ability to return to work as a registered nurse. Dr. Gantz stated as follows:

Debra Byrnes is a patient of mine. The purpose of this letter is to state Ms. Byrnes' medical condition as it may relate to her returning to work as a registered nurse. Ms. Byrnes has a history of Meniere's Disease and is undergoing treatment at the University of Iowa, Department of Otolaryngology – Head and Neck Surgery. As a result of this disease process and its treatment, she is currently deaf in her left ear and has poor balance function. Rapid head movements and body position changes, reduced visibility, and uneven or soft ground, among other factors, all may lead to dizziness, loss of balance, instability and nausea.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Bruce J Gantz, MD, FACS
Professor and Head, Dept of Otolaryngology
Brian F McCabe Distinguished Chair in
Otolaryngology-Head and Neck Surgery
Professor, Dept of Neurosurgery

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a, and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence in the record establishes that Ms. Byrnes has not been able to work and available for work within the meaning of the law since she established her claim for benefits. Ms. Byrnes has at all relevant times suffered from a serious debilitating and progressive illness that prevents her from being able to work. The July 23, 2016 document from Dr. Gantz is not a medical release and does not indicate that Ms. Byrnes is able to work. Indeed, the document strongly suggests that Ms. Byrnes is not able to work as a registered nurse or otherwise. The evidence indicates that for the three-week period when Ms. Byrnes' unemployment insurance claim was active, at least half of the positions she applied for were for work she knew she could not perform in light of her medical condition. For the period beginning July 17, 2016, Ms. Byrnes did not make weekly claims and would not be eligible for benefits. See Iowa Administrative Code section 871-24.2(1)(g). Effective June 26, 2016, Ms. Byrnes is not eligible for unemployment insurance benefits. The able and available disqualification continued as of the August 11, 2016 appeal hearing.

DECISION:

The July 19, 2016, reference 02, decision is affirmed. The claimant has not been able to work and available for work within the meaning of the law since she established her claim for benefits. Effective June 26, 2016, the claimant is not eligible for unemployment insurance benefits. The able and available disqualification continued as of the August 11, 2016 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs