

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIN R GONZALES-GARCIA
Claimant

APPEAL NO. 06A-UI-10614-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INTIATIVES
Employer

OC: 09/24/06 R: 03
Claimant: Appellant (1)

Section 96.4-3 – Ability to and Available for Work

STATEMENT OF THE CASE:

Sherrin R. Gonzales-Garcia (claimant) appealed a representative's October 30, 2006 decision (reference 01) that concluded she was not eligible to receive benefits from September 24 through October 14, 2006, because of an injury or illness. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2006. The claimant responded to the hearing notice but was not available for the hearing. Lynn Corbeil, appeared on the employer's behalf. Selina Selsor and Tom Boswell were available to testify on the employer's behalf.

The employer agreed to hold the hearing open for 15 minutes or until 1:15 p.m. to give the claimant an opportunity to participate in the hearing. At 1:15 p.m. the hearing was closed and the employer's witnesses were excused. The claimant contacted the Appeals Section for the hearing at 1:20 p.m. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Was the claimant able to and available for work September 24 through October 14, 2006?

FINDINGS OF FACT:

The claimant started working for the employer in November 2005. The claimant did not feel well on September 25 and went to a doctor the next day. The claimant's doctor excused the claimant from working on September 26, 2006. On September 29, 2006, the claimant's doctor gave the claimant a work restriction that she could not lift more than ten pounds through October 6, 2006. The claimant's job required her to lift more than ten pounds. The employer does not accommodate work restrictions when they are not the result of a work-related injury. The claimant returned to work the week ending October 14, 2006, and earned \$135.00 in wages.

Recently, the claimant and her family have been ill with colds and the flu. On November 14, the claimant forgot about the hearing because she had a sick child and went to the local pharmacy to get some medication. If the claimant had not forgotten about the hearing, she would have been available at 1:00 p.m. The claimant returned the Appeals Section call after she returned from the pharmacy. By the time the claimant was available, the hearing had been closed and the employer had been excused. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant forgot about the scheduled hearing at 1:00 p.m. The claimant was not called away as the result of an emergency. While it is understandable that a person may forget about a scheduled hearing, this reason does not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. The claimant's doctor excused the claimant from working on September 26. On September 29, the claimant's doctor gave the claimant a work restriction that she could not lift more than ten pounds for one week. The record indicates the claimant was unable to work a majority of the week of September 24. 871 IAC 24.23(34).

The claimant asserted in her appeal she was able to do some work, just not her regular job duties with the ten-pound lifting restriction. With a ten-pound lifting restriction, the claimant restricted the work she was capable of doing and in reality asked the employer for a tailor-made job. The employer is not obligated to make special accommodations and give the claimant a tailor-made job when she is unable to perform her regular job duties. For the week ending October 7, the claimant is not eligible to receive benefits because she was unable to perform her regular job duties.

The week of October 8, the claimant returned to work and earned gross wages of \$135.00. The record does not establish the date the claimant was able to return to her regular job duties without any work restrictions. The claimant has the burden to establish she is able and available for work. The decision that the claimant is not eligible to receive benefits for the week ending October 14, 2006, cannot be changed because it is not known if the claimant was available to work without any work restrictions the majority of the week.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's October 30, 2006 decision (reference 01) is affirmed. The claimant was not able to work her regular job due to an

illness or injury for the weeks of September 24, October 2 and 9, 2006. The claimant is not eligible to receive benefits for the weeks ending September 30 through October 14, 2006.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs