**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA J KING**
Claimant

**CENTRAL IOWA HOSPITAL CORP**
Employer

**APPEAL NO. 10A-UI-09239-MT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 03/28/10**
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 17, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 13, 2010. Claimant participated. Employer responded to the hearing notice but did not participate. Exhibit A was admitted into evidence. Employer called about 30 minutes after the hearing start time. Employer's representative had taken the day off. Another employee was to take the call. No one changed the number and name of the representative with the Appeals Bureau. The substitute did not call in while the hearing was in progress.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on March 12, 2009. Claimant went off work due to a work-related back injury that claimant did not report. Claimant used all of her FMLA effective June 5, 2009. Claimant was laid off by employer because claimant was still on work restrictions and had no more FMLA left to use.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence establishes that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship because claimant overextended her FMLA. Since claimant was off work due to illness or injury, this is a separation for cause attributable to employer. Claimant's exhausting all of her FMLA is not a disqualifiable event for unemployment. Benefits allowed.

Iowa Code section 96.5-1-d provides:

> An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

**DECISION:**

The decision of the representative dated June 17, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Employer's request to reopen the record is denied.

_____
Marlon Mormann
Administrative Law Judge

_____
Decision Dated and Mailed

mdm/kjw