

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A FAIRCLOTH
Claimant

APPEAL NO: 09A-UI-09092-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/26/09

Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Jessica A. Faircloth (claimant)) appealed a representative's June 15, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 13, 2009. The claimant participated in the hearing. Alyce Smolsky of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Cathy Marker and Diane Hill. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on September 19, 2008. She normally worked part time (20 – 30 hours per week) as a certified nursing aide (CNA) in the employer's Chariton, Iowa long-term care nursing facility. She most recently worked April 8, 2009. On April 10 the claimant provided the employer with a doctor's note with a 25-pound lifting restriction due to complications from pregnancy. The essential job functions of the claimant's CNA position routinely require the ability to lift more than 25 pounds. As a result, the claimant was placed on leave and has not worked in her position since April 8. As recently as the date of the hearing the claimant's doctor had restated the same restriction against her lifting more than 25 pounds. The claimant is not due to give birth until October 21, 2009. As of June 25 the claimant's employment status was converted to PRN (*Pro re nata* – commonly used in medicine to mean "as needed") so that at such point as she no longer has any lifting or other restrictions she could be returned to work without going through the rehiring process.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant's current unemployment is due to her being on a leave of absence due to a non-work-related medical issue. As the condition causing her temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she must have a complete recovery to full work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits she was and is under sufficient work restrictions as would preclude her from returning to her regular work duties. She is therefore not eligible to receive unemployment insurance benefits for this period.

DECISION:

The representative's June 15, 2009 decision (reference 02) is affirmed. The claimant was not and is not able and available for work effective April 10, 2009, and the period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for the period beginning April 10, 2009 until she is released with no further restrictions so to allow her to return to her regular duties.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css