

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Suzanne Presley began working for Care Initiatives on April 1, 2005. She was a full-time certified nursing assistant.

The claimant was pregnant and provided the employer with a doctor's statement on August 28, 2005, which restricted her work duties to lifting not more than 25 pounds. As a CAN, her job duties requires her to lift 50 pounds routinely, and occasionally more than that. She is currently on a medical leave of absence until being released by her doctor.

The record was closed at 11:05 a.m. At 11:19 a.m. the claimant called and requested to participate. She had received the notice of the hearing and provided a telephone number, but was not present when the call was made at 11:00 a.m.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 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".

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant is currently on a leave of absence because of her pregnancy. Under the provisions of the above Administrative Code section this means she is not able and available for work and is ineligible for unemployment benefits.

The next issue is whether the record should be reopened. The judge concludes it should not.

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.

The claimant was not present when the state conference operator called her phone number for the hearing. Failure to be present at the time and date specified for the hearing is not good cause to reopen the record and the request is denied.

**DECISION:**

The representative's decision of September 19, 2005, reference 02, is affirmed. Suzanne Presley is not able and available for work and is ineligible for benefits.

bgh/kjw