

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SIENNA P MALLY**  
Claimant

**APPEAL NO. 09A-UI-05572-CT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**CRESTVIEW ACRES INC**  
Employer

**Original Claim: 02/22/09  
Claimant: Appellant (2)**

Section 96.5(1)- Voluntary Quit  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Sienna Mally filed an appeal from a representative's decision dated March 30, 2009, reference 03, which denied benefits on a finding that she was not available for work. After due notice was issued, a hearing was held by telephone on May 6, 2009. Ms. Mally participated personally. The employer participated by Matthew Carpenter, Administrator, and Valerie Forrester, Director of Nursing. Exhibits One and Two were admitted on the employer's behalf.

**ISSUES:**

At issue in this matter is whether Ms. Mally was separated from employment for any disqualifying reason.

Also at issue is whether she has satisfied the availability requirements of the law since filing her claim effective February 22, 2009.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mally began working for Crestview Acres, Inc. on July 16, 2008 as a full time certified nursing assistant (CNA). She made application specifically for the position the employer had available working from 11:00 a.m. until 7:00 p.m. The application for hire asks the applicant to indicate a shift preference. The choices listed are 7-3, 3-11, 11-7, and "other." Ms. Mally checked the "other" space. She worked the 11:00 a.m.-to-7:00 p.m. shift until the end of September.

At the end of September, Ms. Mally became a restorative aide. The individual she was replacing had been working from 7:00 a.m. until 3:00 p.m. As an accommodation to Ms. Mally, the hours were changed to 8:00 a.m. until 4:00 p.m. She had family obligations that prevented her from reporting to work before 8:00 a.m. On February 25, Ms. Mally was notified that her position as a restorative aide was being eliminated. She was offered work as a CNA but would be required to change her work shift. She was offered work on the 6:00 a.m.-to-2:00 p.m. shift but could not accept it because of pre-existing family obligations. She was also offered work on the 2:00 p.m.-to-10:00 p.m. shift. Ms. Mally could not work this shift because she was taking a 10-week class that started at 6:30 p.m. six nights each week. She was not interested in working the 10:00 p.m.-to-6:00 a.m. shift.

Ms. Mally eventually decided she would try to work the 6:00 a.m. shift if she could find someone to cover her family obligation in the mornings. She could not find anyone to do so. She was allowed to remain on as a restorative aide working one day per week. She was also on call to work as needed. Because she was not getting enough hours of work, Ms. Mally quit the employment on April 6, 2009

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Mally applied for a job that had hours which were compatible with her family obligations. She clearly indicated on the application for hire that her availability was limited. She remained available to work the shift for which she applied and for which she was hired. She is available to work between 8:00 a.m. and 7:00 p.m. Inasmuch as Ms. Mally continued to be available to the employer to the same extent as hired, it is concluded that she was available for work within the meaning of Iowa Code section 96.4(3).

Ms. Mally quit the employment as of April 6, 2009. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Mally quit because of a change in the terms and conditions of her employment. She was hired to work as a CNA on the 11:00 a.m. to 7:00 p.m. shift. She agreed to the September change in her job duties and shift assignment because the employer was willing to change the hours to accommodate her other obligations. It was the employer's decision to eliminate Ms. Mally's position as restorative aide.

After the elimination of the restorative aide position, the only work available to Ms. Mally was on shifts that conflicted with her prior obligations. An employer takes an employee as they find him or her. The employer hired Ms. Mally in spite of the limited availability indicated on her application for hire. She was under no obligation to change pre-existing obligations in order to accommodate the employer's needs. The employer changed the terms and conditions under which Ms. Mally accepted employment. As such, she had good cause attributable to the employer for quitting in that the change substantially reduced the number of hours of work available to her during times she was available to work. For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated March 30, 2009, reference 03, is hereby reversed. Ms. Mally has satisfied the availability requirements of the law effective February 22, 2009. She voluntarily quit the employment for good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw/kjw