

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMILY R NEWTON**  
Claimant

**APPEAL NO. 08A-UI-10690-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**  
Employer

**OC: 10/05/08 R: 02  
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 16, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Alyce Smolsky participated in the hearing on behalf of the employer with a witness, Tracy Vabel. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's last employer was Americlnn where she worked from September 15 to 19, 2008. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked for the employer full time as a telephone sales representative from January 2, 2008, to April 17, 2008, when she was laid off due to lack of work after the H & R Block tax account that she was working on ended. She worked a day-shift from 7:00 a.m. to 3:00 p.m. The claimant was informed and understood that under the employer's work rules, she was required to get approval from her supervisor and the center manager before she could change her work shift.

She was recalled to work on the employer's DirecTV account starting May 5, 2008. She worked until June 4, 2008, on the 3:00 p.m. to midnight shift. She left work early on June 4, 2008, when she was informed her mother had injured herself in a mower accident.

It was determined that the claimant's mother had fractured her hip and would need care until she recovered from her injury. The claimant's brother worked nights. The claimant decided to see if she could get a dayshift so her brother could care for her during the day, and then she could care for her at night. She called an employee named Ebony at the force desk and explained that she could not work the evening shift and wanted a day shift because of the

situation involving her mother. Ebony told her that she would check with the center manager and get back to her. No one ever contacted the claimant again. The claimant called about a week later and asked for Ebony, but she was not available and the claimant was told to call back later. The claimant did not call back or report to work after that. The claimant left employment to care for her injured mother since the employer would not give her day hours.

The claimant took a job with AmericInn September 15 to 19, 2008.

After applying for unemployment insurance benefits in October 2008, the claimant contacted the employer twice to see if there were any openings available but no work was available.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant must be considered to voluntarily quit her employment. She was hired to work 3:00 p.m. to midnight shift. She told the employer that she was no longer willing to work those hours. Even if Ebony said that she would check with the center manager and get back to the claimant and did not do so, does not change the result. The claimant knew at the point that she spoke to Ebony that the center manager was the person who needed to approve the schedule change. If Ebony did not get back to the claimant, the reasonable thing for the claimant to do would be to go into work and talk to the center manager about her request. Instead, the claimant stopped reporting to work.

The next question is whether she quit without good cause attributable to the employer. The claimant quit employment to care for her injured mother, which is a compelling reason, but not a cause attributable to the employer. The law provides an exception to the disqualification for voluntarily quitting employment in Iowa Code § 96.5-1-c, if a claimant leaves employment for the necessary and sole purpose of taking care of a member of the claimant individual's immediate family who was then injured or ill. This exception, however, only applies if the claimant immediately offered to return to work for the employer after the family member recovered and she had not accepted other employment before offering to return to work for the employer. The claimant left work to care for her mother, but she did not offer to return to work immediately after her mother recovered. She also had accepted other employment before she contacted the employer about returning to work for the employer.

**DECISION:**

The unemployment insurance decision dated December 16, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been

paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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