

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M JACKSON
Claimant

APPEAL NO. 07A-UI-01426-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
DOLLAR GENERAL
Employer

OC: 01/07/07 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Dolgencorp, Inc./Dollar General (employer) appealed a representative's February 1, 2007 decision (reference 02) that concluded Michelle M. Jackson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2007. The claimant participated in the hearing. Jessie Homernick appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 6, 2006. She worked part-time hours (10 – 12 hours per week) as a store clerk in the employer's Dubuque, Iowa, store. This pattern of part-time hours was the claimant's typical regular employment during her base period. Her last day of work was November 21, 2006.

On November 21, the claimant was scheduled to work from 7:00 a.m. to 11:00 a.m. She had car trouble that day and did not report to work until approximately 8:00 a.m. The assistant manager on duty that day gave her a verbal reprimand. The claimant proceeded to assist in unloading some boxes, during which time she had some issue with the assistant manager regarding the assistant manager sharing some box cutters with the claimant and assisting the claimant in opening some boxes for her with the box cutters but not assisting another store clerk who was also opening and unloading boxes.

At approximately 10:50 a.m., the claimant was at the register wiping it down. She asked the assistant manager if she could take a smoking break and the assistant manager denied the

request. The claimant became upset and began raising her voice. The assistant manager called the acting store manager, Ms. Homernick. Ms. Homernick could hear the claimant through the phone yelling at the assistant manager. She heard the claimant saying that the assistant manager was not being fair, that she was tired of the nitpicking, that she was not going to take it any more, that she was leaving, and that she then left the store. The claimant asserted that she had simply asked the assistant manager if she could leave and that the assistant manager had given her permission to leave. Ms. Homernick indicated that the assistant manager had acknowledged that the claimant was leaving, as in quitting, perhaps by saying "okay," or "fine," but denied that the claimant had said anything asking for permission to leave or that the assistant manager had said anything to the effect that the claimant had permission to leave without repercussion. The administrative law judge finds Ms. Homernick's testimony on this point to be more credible, and accepts as true her testimony the events of that day.

The claimant established a claim for unemployment insurance benefits effective January 7, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$406.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's February 1, 2007 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 21, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$406.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css