

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA E PENROD
Claimant

APPEAL NO. 12A-UI-05843-VST

DOLGENCORP LLC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/22/12
Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated May 15, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits after May 5, 2012. After due notice, a telephone conference hearing was scheduled for and held on June 12, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Rebecca Penrod.

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time assistant manager at a Dollar General store located in Ottumwa, Iowa. The claimant's last day of work was April 24, 2012. She was terminated by the manager, Glen, on that date.

The claimant had arranged a month in advance to have a day off on April 27, 2012. She needed to take her husband to an appointment with the Veterans Administration in Iowa City Iowa. The claimant looked at the schedule on April 24, 2012, and discovered that Glen had scheduled her to work that day. She tried to explain to him that she had had that day off for a month. He told her that the store's needs were more important than her needs. He yanked the keys out of her hand and fired her. He asked another employee to escort her out of the building.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The evidence established that it was the employer who initiated the separation of employment in this case. The claimant had been thinking about stepping down from her position of assistant manager due to the poor treatment and belittlement she received from the store manager. Before she could even discuss this with him, she noticed that he had put her on the schedule for

April 27, 2012, a day she had off so that she could take her husband to Iowa City. Glen told her that the store's needs were more important than her needs and proceeded to terminate her. The claimant clearly did not quit. The employer terminated the claimant. There is no evidence of misconduct. Benefits are allowed from April 22, 2012, provided the claimant is otherwise eligible.

DECISION:

The decision of the representative dated May 15, 2012, reference 01, is modified in favor of the appellant. Unemployment insurance benefits are allowed beginning April 22, 2012, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs