

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTEN S COLEMAN**

Claimant

**APPEAL NO: 13A-UI-07402-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC / DOLLAR GENERAL**

Employer

**OC: 01/06/13**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

DolGenCorp, L.L.C. / Dollar General (employer) appealed a representative's June 18, 2013 decision (reference 03) that concluded Kristen S. Coleman (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Ramzie Siebuhr appeared on the employer's behalf regarding the timeliness issue, and Mike Williams appeared on the employer's behalf regarding the separation issue. During the hearing, Exhibit A-1 and Employer's Exhibit One were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES**

Was the employer's protest timely or are there legal grounds under which it should be treated as timely? Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**OUTCOME:**

Reversed. Benefits denied.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective January 6, 2013. A notice of claim was mailed to the employer's representative's last-known address of record on February 5, 2013. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by February 15, 2013. The protest was not treated as filed until the employer protested a quarterly statement of charges on May 21, 2013, which is after the date noticed on the notice of claim. However, the employer's representative provided evidence that on February 15, 2013 it had successfully faxed a protest to the Agency.

The claimant started working for the employer on July 10, 2012. She worked full time as a lead sales associate in the employer's Northwood, Iowa store. Her last day of work was November 22, 2012.

The claimant was scheduled for work on November 23, and continued work was available for her at that time thereafter. However, the claimant was a no-call/no-show for work on November 23. On either November 23 or November 24 the claimant had a phone conversation with the store manager in which she informed the store manager that she could not work for the employer any longer and that she had or was moving to Chicago due to a domestic issue.

On or a few days after December 1 the claimant came into the store and spoke to the store manager. She asked if she could have her job back. The store manager replied that she would need to speak to the district manager, Williams. The claimant never spoke to Williams.

Unbeknownst to the claimant on November 22, on November 21 another employee had reported to Williams that there was a concern regarding an apparently irregular sales transaction the claimant had conducted with a friend. Williams did not come to the Northwood store to investigate the matter until November 24, by which time the claimant had already told the store manager that she was quitting. While the employer concluded that the transaction had amounted to theft, the employer never confronted the claimant regarding the transaction and did not discharge the claimant because of the incident, because she had already quit her employment.

The claimant established a claim for unemployment insurance benefits effective January 6, 2013. The claimant has received unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the *Beardslee* court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative faxed a completed protest into the custody of the Agency on February 15, 2013, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest treated as received within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

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. Rule 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 and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). 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 moving away due to a personal or family issue is a good personal issue but not one attributable to the employer. 871 IAC 24.25(2), (23). The employer had accepted the claimant's resignation; the fact that the claimant later sought to return to the employment but was not automatically reinstated does not convert the separation into a discharge. 871 IAC 24.25(37); *Langley v. Employment Appeal Board*, 490 N.W.2d 300 (Iowa App. 1992). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's June 18, 2013 decision (reference 03) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 23, 2012, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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