

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CONNIE S WINELAND
PO BOX 155
AVOCA IA 51521-0155

DOLGENCORP INC
DOLLAR GENERAL
C/O COMP TAX MGR
PO BOX 34150
LOUISVILLE KY 40232

Appeal Number: 06A-UI-02988-HT
OC: 02/05/06 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Dollar General, filed an appeal from a decision dated March 2, 2006, reference 01. The decision allowed benefits to the claimant, Connie Wineland. After due notice was issued a hearing was held by telephone conference call on April 3, 2006. The claimant participated on her own behalf. The employer participated by Manager Teresa Benning .

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Connie Wineland was employed by Dollar General from September 20, 2004 until February 7, 2006. She was a full-time assistant manager.

The claimant became increasingly upset whenever Manager Teresa Benning would talk to her about personal phone calls and other matters. She complained to the district manager, Bob, who set up a meeting with the two of them and himself in late January 2006. The three attempted to work things out but Ms. Wineland was not satisfied.

Ms. Wineland called Bob late Monday night, February 6, 2006, to continue to complain about the manager and ask for a transfer. She was told none were available. The district manager contacted Ms. Benning the next day to say he was tired of the claimant calling him at all hours and to tell her she was not to call again "unless the store was burning down."

Ms. Benning conveyed this sentiment to the claimant, and reiterated what Bob had said about there being no transfers. The claimant walked out sometime after that without notifying the manager or clocking out. She left her keys in the back office and her name tag on the front counter, and notified the corporate office by phone that she had quit.

Ms. Wineland has many personal family issues which caused her to receive personal phone calls during her work, including calls from her husband to "see how she was doing" and questions from a daughter to find out how her brother was. The claimant has been on medication for anxiety since before starting her employment with Dollar General and continues in some distress.

Connie Wineland has received unemployment benefits since filing a claim with an effective date of February 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

871 IAC 24.25(22) & (28) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code

section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The claimant quit because she felt she was being persecuted by the store manager. However, the only specific complaint she was able to present was a verbal warning about too many personal phone calls. From the claimant's testimony, she did receive a number of these calls, and only for general inquiries from her family as to how she or her son were, and ex-husbands with legal problems. These are not appropriate in the workplace on such a frequent basis and the administrative law judge considers the manager and the district manager had good cause to give her a warning about this.

As to her general state of anxiety, it appears she was overly sensitive and any comment or request for improvement from the manager was seen as a personal attack. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973).

Her complaints to the district manager were addressed in a meeting with between herself and the store manager, but she was unsatisfied with the outcome and continued to feel herself persecuted. The district manager only requested that she not continue to call him at all hours to discuss her personal problems. The administrative law judge does not consider this to be an unreasonable request but Ms. Wineland apparently felt it was.

The record establishes the claimant did not have good cause attributable to the employer and she is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 2, 2006, reference 01, is reversed. Connie Wineland is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$825.00.

bgh/tjc