

**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**

**TARA S BEBBER
115 DAVENPORT ST
LECLAIRE IA 52753**

**DILLARD DEPARTMENT STORES INC
ATTN MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110**

**Appeal Number: 05A-UI-05657-RT
OC: 05-01-05 R: 04
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 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Dillard Department Stores, Inc., filed a timely appeal from an unemployment insurance decision dated May 17, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Tara S. Bebber. After due notice was issued, a telephone hearing was held on June 15, 2005, with the claimant participating. Mary White, Store Manager of the employer's store in Davenport, Iowa, where the claimant was employed, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer most recently as a full-time area sales manager, from July 27, 2004 until she separated from her employment on May 2, 2005. On May 1, 2005, the claimant left a letter of resignation of that date as shown at Employer's Exhibit One taped to the door of Mary White, the employer's witness and the Store Manager at the employer's store in Davenport, Iowa, where the claimant was employed. Ms. White found the letter on May 2, 2005.

The claimant was having significant personal problems and issues including childcare. These problems were interfering with the claimant's ability to work on her days off when necessary because the floor was not fully staffed. Area sales managers must work on days when the floor is not staffed and the claimant was aware of this when she became a manager. On April 26, 2005, the claimant consulted Ms. White about her situation. At that time the claimant attempted to resign. Ms. White informed the claimant that she did not want her to resign and Ms. White told the claimant to take the rest of the week off and get her personal issues resolved including childcare and return to work on Sunday, May 1, 2005. The claimant did so. During this period of time the claimant began to get calls from co-workers indicating to her that they had heard she was terminated and indicating some sympathy for her personal situation. The claimant believed that Ms. White had shared confidences with the employees but Ms. White had not. The claimant had shared some of her personal problems with some of her co-workers and the word got around about the claimant's problems and her co-workers were supportive but informed the claimant that they heard that she was terminated. The claimant did not attempt to confirm her job status with Ms. White.

On or about April 27, 2005, the claimant removed her personal belongings from her office. When Ms. White learned of this on April 29, 2005, she believed the claimant may have quit and therefore called the claimant. She was unable to reach the claimant but left a message for the claimant to call her. Because Ms. White believed that the claimant might be quitting and she was a manager and had keys, she began to re-key the employer's building. On April 30, 2005, the claimant called Ms. White. The claimant was not told at that time by Ms. White that she was fired or discharged. Ms. White told the claimant to come in on Sunday, May 1, 2005, which she had previously told the claimant to do and that they would talk about the claimant's employment. The claimant was expected to be at work at 9:00 a.m. She arrived at work at 9:30 a.m. but did not seek out Ms. White and discuss her employment with Ms. White. The claimant was told that her shift was filled and, believing that she had been terminated, left. However, the claimant had not been terminated and her shift had not been filled. The claimant was needed to work that day but the claimant did not do so. Ms. White was present at the employer's location on May 1, 2005 from 8:40 a.m. to 1:30 p.m. but the claimant never sought her out.

The claimant did express some concerns to Ms. White about her lack of childcare and working on days off when the floor was not staffed but whether the claimant specifically indicated an intention to quit if her concerns were not addressed is not certain. The claimant attempt to quit on April 26, 2005 but this is because of her personal reasons and the claimant withdrew her resignation after discussing the matter with Ms. White. The claimant also had expressed some concerns to Ms. White about getting along with other managers but whether the claimant specifically indicated an intention to quit over these reasons is also not certain. Pursuant to her

claim for unemployment insurance benefits filed effective May 1, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,106.00 as follows: \$351.00 per week for six weeks from benefit week ending May 14, 2005 to benefit week ending June 18, 2005. For benefit week ending May 7, 2005, the claimant reported vacation pay and wages sufficient to cancel benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. 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(6)(17)(18)(20)(21)(22)(23)(27) provides:

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:

- (6) The claimant left as a result of an inability to work with other employees.
- (17) The claimant left because of lack of child care.
- (18) The claimant left because of a dislike of the shift worked.
- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (23) The claimant left voluntarily due to family responsibilities or serious family needs.
- (27) The claimant left rather than perform the assigned work as instructed.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she submitted her resignation as shown at Employer's Exhibit One, which the employer received on May 2, 2005. The claimant seems to equivocate but testified that she quit because she had no other choice. However, the administrative law judge is constrained to conclude that the evidence does not establish that the claimant was forced to quit or be discharged. If a claimant is compelled to resign when given the choice of resigning or being discharged, the resignation is not voluntary. However, there is no evidence that the claimant was facing a discharge if she did not quit. The claimant testified that she had no other choice but to quit because she heard from co-workers that she had been terminated. However, Ms. White testified that she never told the claimant that she was fired or discharged and the claimant even seems to confirm this testimony. The claimant became upset when she believed that she had been terminated because co-workers told her so but the claimant did not confirm this with Ms. White. The claimant also testified that she believed she was terminated because the employer re-keyed the locks in the employer's location. It is true that Ms. White did see that this was done but she had a legitimate reason in doing so. Ms. White credibly testified that she noted the claimant's personal belongings had been removed from her office and believed that the claimant may have quit and still had a key and, therefore, Ms. White needed to re-key the building. The claimant concedes that she removed at least some of her personal belongings on or about April 27, 2005. This indicates a quit and the administrative law judge believes that the claimant really intended to quit on or about April 27, 2005 when she removed her personal belongings. There would be no other reason for the claimant to remove her personal belongings other than that she was quitting. The claimant's statements at Employer's Exhibit One to the contrary are simply not credible. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on May 2, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she had no choice because she believed that she was terminated. However, the claimant did not bother to check with Ms. White to verify that she had been discharged or terminated or that she would be discharged or terminated and leaving work voluntarily for this reason is not good cause attributable to the employer. There was some evidence that the claimant was having personal difficulties and issues including childcare but leaving work voluntarily because of a lack of childcare is not good cause attributable to the employer. There was some evidence that the claimant was dissatisfied with her hours as a manager when she had to work when the floor was not staffed but leaving work because of a dislike of the shift worked or because of dissatisfaction with the work environment is not good cause attributable to the employer. Also, leaving work for compelling personal reasons when the absence exceeds ten working day or because of family responsibilities or serious family needs is not good cause attributable to the employer. Finally, there is some evidence that the claimant was unable to work with other employees or had a personality conflict with her supervisor but these are also not good cause attributable to the employer.

The claimant testified that she had to work on her days off when the floor was not staffed. However, the evidence indicates that the claimant was aware of this when she became an area sales manager and that but for the childcare difficulties she would be able to work those days. The administrative law judge does not believe that this establishes either that her working

conditions were intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. At the end of the hearing the claimant also testified that she believed that Ms. White had divulged confidences that the claimant had given to Ms. White about her personal problems. Ms. White denied this and testified credibly that the claimant had some friends at work with whom the claimant shared confidences. There is not a preponderance of the evidence that Ms. White shared confidences with co-workers to the extent that the claimant's working conditions would be intolerable or detrimental. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire.

The claimant did express some concerns to Ms. White about working with other managers and about the lack of childcare which made it difficult for her to work on her days off when the floor was not staffed but there is no clear evidence that the claimant actually threatened to quit over these matters. The claimant testified that she did but Ms. White denied this. It is true that the claimant tried to resign on April 26, 2005 but this appears to be because of her personal problems and childcare issues and as noted above, that is not good cause attributable to the employer. The administrative law judge is constrained to conclude on the evidence here that the claimant did not give the employer a reasonable opportunity to address any of her concerns before her quit.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily on May 2, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,106.00 since separating from her employment on or about May 2, 2005 and filing for such benefits effective May 1, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 17, 2005, reference 01, is reversed. The claimant, Tara S. Bebber, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$2,106.00.

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