

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRISCHA K HARRIS
Claimant

APPEAL NO. 08A-UI-10241-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
DOLLAR GEN'L
Employer

OC: 08/10/08 R: 04
Claimant: Respondent (5-R)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 22, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 18, 2008. Claimant participated. Store Manager Amy Baker represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that would disqualify her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Trischa Harris commenced her employment with Dollar General on November 14, 2005. Ms. Harris worked as a part-time cashier at the employer's store on 13th Avenue in Clinton for approximately one year before she transferred to the employer's store in Dewitt. At the Dewitt store, Ms. Harris worked as the part-time "third-key" or third person in charge. On June 14, 2008, Ms. Harris transferred back to the store on 13th Avenue in Clinton. Before Ms. Harris applied for the transfer she spoke with Amy Baker, who managed the 13th Avenue store. Ms. Baker told Ms. Harris that the position she had open was a one-day per week position, the hours of the position would be 5:00 a.m. to 1:00 p.m. and the person in the position would help move freight to the sales floor. Ms. Harris applied for and accepted the transfer with this understanding. However, after Ms. Harris started in the new position, she notified Ms. Baker that she could not appear for work until 7:00 a.m. Ms. Baker amended Ms. Harris's work hours to 7:00 a.m. to 1:00 p.m., though other employees continued to start at 5:00 a.m.

On July 11, Ms. Harris told Ms. Baker that 7:00 a.m. was too early a start time and requested that Ms. Baker change the start time to 9:00 a.m. Ms. Harris indicated that she was unable to work the scheduled hours. Ms. Baker was not willing to make the additional change in work hours. Ms. Harris expressed an interest in finding another Dollar General store that would have hours that would work better with Ms. Harris' personal life. Ms. Harris had been experiencing problems with childcare. Ms. Baker directed Ms. Harris to notify her if she found another store

with an opening, so that Ms. Baker could take steps to initiate a transfer. Ms. Harris knew that the store from which she wanted to transfer had to initiate the transfer by contacting the employer's corporate office. Ms. Baker also told Ms. Harris to notify her if she was able to work the 7:00 a.m. to 1:00 p.m. shift the following week.

On July 18, Ms. Harris went to the employer's store on Camanche Avenue in Clinton and spoke to the store manager, Cherlene Insley, about a transfer. Ms. Insley told Ms. Harris that she had an open position with an 8:30 a.m. start time and Ms. Harris expressed interest in transferring into the position. Ms. Insley indicated that she would speak with Ms. Baker and the area supervisor about initiating the transfer. Ms. Insley delayed taking action on the transfer. Ms. Harris continued to contact Ms. Insley about the transfer and the store manager continued to put Ms. Harris off. Ms. Harris eventually contacted the assistant manager at the 13th Avenue store about her employment status. The assistant manager indicated that the transfer had gone through and that there was no need for Ms. Harris to report to the 13th Avenue store. After that contact, Ms. Baker contacted Ms. Insley, who indicated that she had decided against allowing Ms. Harris to transfer to her store.

Ms. Harris is uncertain of her current employment status with Dollar General, asserts she did not quit, and expresses interest in further employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

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.

The weight of the evidence in the record establishes that Ms. Harris neither voluntarily quit the employment nor was discharged by the employer. While the evidence establishes that Ms. Harris voluntarily separated from her position at the 13th Avenue store, the evidence indicates that Ms. Harris reasonably relied upon the Camanche's store manager's statement that Ms. Harris would be allowed to transfer to that store. The employer has made no further work available for Ms. Harris. The administrative law judge concludes that Ms. Harris has been laid off by the employer. The administrative law judge further concludes that Ms. Harris's separation from the employment does not disqualify her for unemployment insurance benefits. The employer's account may be charged.

The evidence raises the question of whether Ms. Harris has met the work availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits. The matter will be remanded to the Claims Division for determination of that issue.

DECISION:

The Agency representative's October 22, 2008, reference 01 decision is amended as follows. The claimant is laid off from the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged. The matter is remanded to the Claims Division for determination of the claimant's work availability since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs