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

SHAWN M AUEN
500 – 1ST ST
AKRON IA 51001

DOLLAR TREE STORES INC
D/B/A DOLLAR BILLS
500 VOLVO PKWY
CHESAPEAKE VA 23320-1604

Appeal Number: 05A-UI-11356-RT
OC: 11/21/04 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

The claimant, Shawn M. Auen, filed a timely appeal from an unemployment insurance decision dated October 31, 2005, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 21, 2005, with the claimant participating. The claimant was assisted by his father, Harold Auen. Barbara G. Alu, Store Manager at the employer's store in LeMars, Iowa, participated in the hearing for the employer, Dollar Tree Stores, Inc., doing business as Dollar Bills. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a part-time stocker, at least as an active temporary seasonal stocker for several weeks following his employment, from June 26, 2005 until he voluntarily quit effective September 25, 2005. The claimant quit when he failed to show up for work when he was scheduled on September 25 and 26, 2005, and thereafter. The claimant has never returned to the employer and offered to go back to work. The claimant quit because of a severe reduction in his hours. When the claimant was first hired, and at all material times hereto, the claimant was hired part-time. The claimant was promised between 20 and 30 hours per week when he was first hired. It was the employer's intention that the claimant be hired part-time as an active temporary seasonal employee until the store opened. The claimant was initially hired to stock the shelves of the employer's store in LeMars, Iowa, before the store was opened. This employment was at least anticipated by the employer to be active temporary seasonal work. He was told that he should get between 20 and 30 hours per week but the claimant worked as many as 40 hours per week until the store opened, which was approximately two weeks after his hire. When the store opened the employer decided to keep the claimant on part time working between 4 and 15 hours per week. However, the claimant only averaged 4.75 hours per week after the store opened. The claimant lives 20 miles from LeMars, Iowa, and the claimant could not afford the commute for such few hours. He expressed concerns to the employer but the employer could do nothing to address the claimant's concerns. The claimant explained to the employer that he needed more hours to pay for the commute but no additional hours were available and the claimant quit. The employer did not make it clear to the claimant when he was first hired that he would be only working for a couple of weeks at 20 or 30 hours and then later from 4 to 15 hours. The claimant thought that he was going to be working between 20 and 30 hours per week throughout his employment.

Pursuant to his claim for unemployment insurance benefits filed effective November 21, 2004 and reopened effective October 16, 2005, the claimant has received no unemployment insurance benefits. The claimant received unemployment insurance benefits prior to his employment with the employer herein but those are not relevant. During the claimant's base period for this claim the claimant has earnings from Stanek Inc., as follows: $2,521.00 in the third quarter of 2003; $2,724.00 in the fourth quarter of 2003; $2,433.00 in the first quarter of 2004; and $2,549.00 in the second quarter of 2004. The claimant is otherwise entitled and eligible to receive unemployment insurance benefits without consideration of any earnings from the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.27 provides:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

871 IAC 24.26(19) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily. The administrative law judge further concludes that the claimant left

his employment voluntarily on September 25, 2005 when he failed to show up for work on that day and thereafter. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his 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 met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer and even if he did not, the claimant is still entitled to receive unemployment insurance benefits. The evidence establishes that the claimant was hired as a part-time stocker, which employment was intended by the employer to be active temporary seasonal working between 20 and 30 hours per week during the time that the store was preparing to open. However, the claimant justifiably believed that his employment was to be continued at those hours after the store opened. Nevertheless, once the store opened the claimant was employed part-time to work between 4 and 15 hours per week. However, the claimant only averaged 4.75 hours per week. The claimant expressed concerns to the employer about the small number of hours because he had to commute 20 miles to LeMars, Iowa, where the employer's store was located, and he could not afford the commute for 4.75 hours per week. The employer had no more hours to give to the claimant. The claimant then quit. The administrative law judge concludes on the evidence here that the claimant at least justifiably believed that when he was first hired he was hired to be part-time working from 20 to 30 hours and that was to continue even after the store was opened. The reduction in the claimant's hours to 4.75 hours per week is a willful breach of the claimant's contract of hire, which breach is substantial involving changes in working hours. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on September 25, 2005, with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. The administrative law judge specifically notes that the claimant expressed concerns to the employer about the lack of hours but nothing was done.

Even if all of the parties understood that the claimant's employment was going to be part-time active temporary seasonal during the period that the store was preparing to open and not thereafter, this employment would be on a temporary basis and the claimant fulfilled the contract of hire when his job was completed, and this would be a reason for the claimant to leave his employment with good cause attributable to the employer. Further, even assuming that the claimant accepted the change in his contract of hire to a part-time stocker, he was promised between 4 and 15 hours per week, but only received an average of 4.75 hours per week. The administrative law judge would still conclude that the reduction in the hours was a willful breach of the claimant's contract of hire, this time as a part-time stocker, which breach would be substantial involving hours. Finally, even if the claimant left his employment voluntarily without good cause attributable to the employer, the claimant would still be entitled to receive unemployment insurance benefits because he is otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other base period employers and therefore the claimant would still not be disqualified to receive unemployment insurance benefits. Under that scenario it is true that the claimant's benefits would not be based on wages paid by the part-time employer herein, but the administrative law judge notes that the claimant's unemployment insurance benefits for the benefit year in question, effective November 21, 2004, did not consider earnings from the employer. It is also true under that scenario that the employer would not be charged for any unemployment insurance benefits the claimant is entitled, but the administrative law judge concludes, as noted above, that the scenario does not apply, but merely cites it as an example that the claimant would still be entitled to benefits.

DECISION:

The representative's decision of October 31, 2005, reference 02, is reversed.. The claimant, Shawn M. Auen, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer.

dj/kjw