

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANN ELLIOTT
Claimant

APPEAL NO: 11A-UI-02054-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 01/03/10
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Diann Elliott (claimant) appealed an unemployment insurance decision dated February 10, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Dollar General (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2011. The claimant participated in the hearing. The employer participated through Julie Lefler, Store Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time key carrier/shift manager from July 25, 2010 through December 9, 2010 when she voluntarily quit. At the time of hire, the claimant told the manager she had kidney problems and that her daughter was about to give birth so she would likely have some absences related to those issues. The manager said it was not a problem but the claimant's daughter had problems with her pregnancy during September 2010 and the claimant was often late for work. The manager became angry about it and it became a problem. The claimant also had issues with gossip that she would hear the employer had said.

The claimant was not feeling well when she went to work on December 8, 2010. Her shift started at 11:00 a.m. and she was scheduled to work until 9:30 p.m. She was having kidney problems and was "pissing straight blood and in pain." The claimant contacted the manager and asked if someone else could finish her shift. The assistant manager Cathy said she would cover it and the claimant left and went to the emergency room. When she woke up on the following morning, she had received a text message from her manager that said, "Due to your

bullshit lies and making Cathy work another 14-hour shift she is going to quit.” The claimant went to the store, turned in her keys and voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant’s voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant quit her employment on December 9, 2010 due to intolerable working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The manager admitted she sent the inappropriate text message to the claimant but testified that “it wasn’t that bad.” She went on to say, “I expected her to come in and talk to me about it, not to just come in and quit. As for gossip most of it came from her.” The manager added further complaints she had about the claimant. When she was asked whether she thought her text message was appropriate, she responded, “No I didn’t but she also would not give me a chance to even apologize for it.” The manager admitted she thought the claimant was lying about appointments with her kidneys and said that she, “used the kidney story over and over and it didn’t make sense most of the time. So it did get irritating, it got very irritating.” The manager added that Cathy “couldn’t stand working with Diann anymore and neither could most of the rest of the staff. They were all coming to me with complaints all the time. She was coming to me with complaints all the time. And when you hear so much, all of a sudden you just break and that’s what I did that day and I regret it and I’m sorry about that. I wish I hadn’t said it that way.”

The employer witness has established that the working conditions were intolerable for the claimant. It was as if the manager could not say enough disparaging comments about the claimant and that anything she did wrong, “wasn’t that bad.” Any reasonable person would quit under similar circumstances and the employer could lose more employees if it does not require its managers to be professionals.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated February 10, 2011, reference 01, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs