

**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**

**KIMALA J HIMROD
46635 – 210TH AVE
HAVELOCK IA 50546-7556**

**DOLGENCORP INC
D/B/A DOLLAR GENERAL
C/O COMPENSATION TAX MANAGEMENT
PO BOX 34150
LOUISVILLE KY 40232-4150**

**Appeal Number: 04A-UI-03034-RT
OC: 02-08-04 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, Kimala J. Himrod, filed a timely appeal from an unemployment insurance decision dated March 5, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 12, 2004, with the claimant participating. The employer, Dolgencorp, Inc., doing business as Dollar General, did not participate in the hearing because the employer did not call in any telephone numbers, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The employer is represented by Compensation Tax Management, which is well aware of the need to call in a telephone number if the employer wants to participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time assistant manager from June 24, 2002 until she voluntarily quit on January 23, 2004. In early December the boyfriend of the anticipated new manager came into the store and called a coworker to the back where the claimant was, and then proceeded to put his finger in the claimant's face and said to the claimant that he was "going to bury her fucking ass." The claimant was afraid and treated this as a threat and immediately called the area manager, Dave Johnson, and informed him of this. Mr. Johnson thought it was a joke, but did indicate that the boyfriend was not supposed to be in the store. The claimant told him that she would quit if the new manager became the manager and nothing had changed with her boyfriend. The claimant again had a conversation with Mr. Johnson on or about December 23, 2003 about these matters. Nothing changed. The boyfriend continued to come into the store several times but whenever he did, the claimant hurried to the back to avoid him. However, the claimant was informed that once the new manager took over that the boyfriend would be allowed in the store at least long enough to see the store manager. The claimant did not want to continue to be in the store when the boyfriend arrived, so when the new manager took over on January 23, 2004, the claimant quit. Other customers and coworkers were equally afraid of the new manager's boyfriend. There was no other reasons for the claimant's quit.

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.

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(2), (3), (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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

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

The claimant concedes that she left her employment voluntarily. 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 met 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 credibly that she was subjected to a threat by the boyfriend of an impending new manager in early

December. The claimant immediately informed the area manager of this and did so again on December 23, 2003. She indicated that she would have to quit if the new manager became the manager because of her fears of the boyfriend. The area manager informed the claimant that he would take care of the matter and that the boyfriend was not supposed to be in the store except to see his girlfriend, who was going to be the new manager. Nevertheless, even before the new manager took over, the boyfriend came to the store several times. The claimant was scared and immediately went into the back. When the new manager took over the claimant quit. The boyfriend had no connection with the employer or the store other than through his girlfriend. When he made the threat he put his finger in the claimant's face and said he was "going to bury your fucking ass." The employer did not participate in the hearing to provide any evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant's concerns about the boyfriend of the new manager were justified and made her working conditions unsafe, intolerable and detrimental, and perhaps unlawful. Therefore, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision dated March 5, 2004, reference 01, is reversed. The claimant, Kimala J. Himrod, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

b/b