

**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**

**YVONNE K BALES
6328 HWY 9
OCHEYEDAN IA 51354**

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

**Appeal Number: 05A-UI-07943-RT
OC: 07-10-05 R: 01
Claimant: Appellant (1)**

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, Yvonne K. Bales, filed a timely appeal from an unemployment insurance decision dated July 29, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 18, 2005, with the claimant participating. Beverly Bjork, Manager of the employer's store in Sibley, Iowa, participated in the hearing for the employer, Dolgencorp, Inc., doing business as Dollar General. 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 cashier and general sales person from February 19, 2004 until she voluntarily quit on July 8, 2005. On that day, the claimant called the home phone of the Manager of the employer's store in Sibley, Iowa, where the claimant was employed, Beverly Bjork, the employer's witness, and left a voice mail message that she was quitting. The claimant quit because of alleged bad remarks by Ms. Bjork to the claimant on July 8, 2005.

On July 8, 2005, Ms. Bjork came in to get her check. She was not working on duty that day. She was visiting with an employee who was on duty and they were whispering. Ms. Bjork believed that they were whispering and gossiping and simply told them that that was not attractive and then left. Whether there were any other conversations at that point between the claimant and Ms. Bjork is uncertain, but the claimant nevertheless continued to talk to the employee who was on duty. The claimant then went to get her check from Ms. Bjork and Ms. Bjork said something to the claimant about the fact that she could have been fired before, meaning something about the claimant's cash shortages. The claimant was offended at this, went home, talked to her husband, and called Ms. Bjork and quit as noted above. Whether Ms. Bjork said "your just damn lucky I hired you" is uncertain. The claimant testified she did but Ms. Bjork said that she could not recall the comments.

The claimant alleged that Ms. Bjork had made other "bad" remarks to her and cited as an example, a situation in which the claimant was talking to a customer while checking the customers out and Ms. Bjork came in and took over the checking out and told the claimant to go to the back and unbox some merchandise and stock the merchandise. The claimant testified that she was offended at this. However, the claimant testified that all of these other alleged remarks, the claimant just "brushed off" because she knew that Ms. Bjork was stressed. The claimant never at any time, expressed any concerns to any one at the employer about her concerns with Ms. Bjork, nor did she ever indicate or announce an intention to quit if any problems she was having at work were not addressed, including problems with Ms. Bjork.

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.

871 IAC 24.25(22)(28) 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:

- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily on July 8, 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 only reason the claimant voluntarily left her employment was remarks alleged to be "bad" from the store Manager, Beverly Bjork, the employer's witness. On the day of the quit the claimant testified that she was told by Ms. Bjork that the claimant was "just damn lucky I hired you" and "I should have fired you before." Ms. Bjork denies saying anything about the claimant being damn lucky she was hired but concedes that she told the claimant she "could have fired her before." This arose because earlier Ms. Bjork had admonished the claimant, who was in the employer's store but not working or on the clock at the time, and an employee who was on the clock, for allegedly whispering and gossiping. The claimant was at the employee's store to get her check. After these remarks were made to the claimant, she got her check, left, went home, talked to her husband, and then called and left a voice mail message for Ms. Bjork that she was quitting. The claimant testified that Ms. Bjork had made other "bad" remarks, but that in the past the claimant had just brushed them off because she new the Ms. Bjork was stressed. The claimant had no reasonable explanation as to why she didn't simply brush off these new remarks. For examples of other "bad" remarks the claimant cited a situation in which the claimant was checking out customers and was told to go to the back and unpack and restock shelves and that Ms. Bjork would take over checking out customers.

On the record here, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that these remarks by Ms. Bjork were such that the remarks established that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. There is no evidence that the claimant was subjected to a substantial change in her contract of hire. Rather, it appears that the claimant quit because she was admonished for

gossiping and perhaps the claimant had a personality conflict with her supervisor but these are not good cause attributable to the employer. The claimant adamantly denies gossiping on July 8, 2005, but that is not the issue. The issue is whether Ms. Bjork reasonably believed that the claimant was, and the administrative law judge concludes that she did, and then she reprimanded the claimant. This reprimand is what finally prompted the claimant to quit. No doubt the comments of Ms. Bjork also contributed to the claimant's quit, but as noted above, the administrative law judge concludes that those comments do not establish that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. Finally, and most compelling, the claimant never expressed any concerns to the employer about her working conditions including her concerns about Ms. Bjork, nor did she ever indicate or announce an intention to quit if any of her problems at work were not addressed, including problems with Ms. Bjork. The claimant gave the employer no opportunity to address any of her concerns before her quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily 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.

Although the claimant's employment was part-time, the administrative law judge notes that the claimant has no earnings from any other employer in her base period and therefore is not otherwise monetarily eligible to receive unemployment insurance benefits. See 871 IAC 24.27.

DECISION:

The representative's decision of July 29, 2005, reference 01, is affirmed. The claimant, Yvonne K. Bales, 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.

dj/pjs