

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

Appeal Number: 04A-UI-01920-RT  
OC: 01/18/04 R: 02  
Claimant: Respondent (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, 4<sup>th</sup> 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.

BECKY A JOHNSON  
917 E 27<sup>TH</sup> CT  
DES MOINES IA 50317

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.

FAMILY DOLLAR STORES OF IOWA INC  
STORE # 1424  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Family Dollar Stores of Iowa, Inc., Store 1424, filed a timely appeal from an unemployment insurance decision dated February 13, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Becky A. Johnson. After due notice was issued, a telephone hearing was held on March 24, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Earl Bartley, Store Manager, participated in the hearing for the employer. Mr. Bartley informed the administrative law judge that TALX UCM Services, Inc., would be participating in the hearing, but when the administrative law judge attempted to call the purported hearing representative, Dawn Casey, he only reached Ms. Casey's voice mail. The

administrative law judge left a message that he was going to proceed with the hearing and if Ms. Casey wanted to participate on behalf of the employer, she needed to call before the hearing was over and the record was closed. She did not do so. This hearing was originally scheduled for March 12, 2004 at 10:00 a.m. and rescheduled by the administrative law judge. A notice for that hearing was also sent to the claimant. The claimant responded to neither notice. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

#### 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, most recently as a full-time assistant manager, from December 18, 2000 until she voluntarily quit on January 2, 2004. At that time, the claimant was having a discussion with the new store manager, Earl Bartley, and the employer's witness. The claimant had been resistant to Mr. Bartley's being store manager. The previous store manager had quit and the claimant assumed that she would become the new store manager, but she was not appointed. The claimant was displeased and had words with Mr. Bartley about this on January 2, 2004. Mr. Bartley informed the claimant that he was the store manager and she was the assistant and she needed to get used to it. At that point, the claimant stated she was quitting and giving her two-week notice. However, the next work day, January 3, 2004, the claimant was absent and did not inform the employer nor did she ever return or offer to go back to work for the employer. The claimant did report directly to Mr. Bartley. Mr. Bartley did not tell the claimant that she was fired or discharged. The claimant had never expressed any concerns to Mr. Bartley about her working conditions nor had she done so to anyone else that Mr. Bartley heard about. The claimant also never threatened or announced an intention to quit if any problems she was having at work were not addressed by the employer either to Mr. Bartley or to anyone that he heard about. Work remained available to the claimant had she not quit.

Pursuant to her claim for unemployment insurance benefits filed effective January 18, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,656.00 as follows: \$184 per week for nine weeks from benefit week ending January 24, 2004 to benefit week ending March 20, 2004. Of that amount, \$1,172.00 was offset against an overpayment from 1997.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 24.25 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.

871 IAC 24.25(21), (22) provides:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant quit voluntarily when she so informed the store manager, Earl Bartley, orally on January 2, 2004, giving a two-week notice, but then never showing up for work thereafter. Apparently, the claimant maintains that she was discharged. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The employer's witness, Earl Bartley, Store Manager, credibly testified that he was a newly appointed manager for the store in question and that the claimant was displeased at that because she thought she should be promoted from assistant manager to the manager position and was not. Mr. Bartley and the claimant had a discussion on January 2, 2004 and the claimant informed him that she was quitting. Mr. Bartley credibly testified that he did not tell the claimant that she was fired or discharged. Accordingly, the administrative law judge concludes that the claimant 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 the burden to prove that she has left her employment 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 claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. Mr. Bartley credibly testified that the claimant quit because she was displeased at not being made the store manager after the previous store manager had quit. The claimant was resistant to Mr. Bartley and Mr. Bartley finally had to admonish the claimant that he was the manager and she was the assistant manager and she would have to get used to it. The claimant was not discharged or fired at that time. The administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Rather, the evidence establishes that the claimant quit because she was dissatisfied with her working environment and had a personality conflict with her supervisor, neither of which is good cause attributable to the employer. There is also some evidence that the claimant was reprimanded but this also is not good cause attributable to the employer. See 871 IAC 24.25(28). Finally, there is no evidence that the claimant ever expressed any concerns to

the employer about any working conditions nor did she ever indicate or announce an intention to quit over these matters prior to her quit.

Accordingly, and for all the reasons set out above, 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.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,656.00 since separating from the employer herein on or about January 2, 2004 and filing for such benefits effective January 18, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision dated February 13, 2004, reference 01, is reversed. The claimant, Becky A. Johnson, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. She has been overpaid unemployment insurance benefits in the amount of \$1,656.00.

kjf/b