

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<p><b>JAYLYNN R MARTIN</b> Claimant</p> <p><b>FAMILY DOLLAR STORES OF IOWA</b> Employer</p>	<p>68-0157 (9-06) - 3091078 - EI</p> <p><b>APPEAL NO. 12A-UI-10694-HT</b></p> <p><b>ADMINISTRATIVE LAW JUDGE DECISION</b></p> <p><b>OC: 12/18/11</b> <b>Claimant: Respondent (2-R)</b></p>
---	--

Section 96.5(1) – Quit`

**STATEMENT OF THE CASE:**

The employer, Family Dollar, filed an appeal from a decision dated August 23, 2012, reference 04. The decision allowed benefits to the claimant, Jaylynn Martin. After due notice was issued, a hearing was held by telephone conference call on October 1, 2012. The claimant participated on her own behalf. The employer participated by Store Manager Briannetta Willis and Assistant Store Manager Alejandra Silva.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits or whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Jaylynn Martin was employed by Family Dollar from February until August 7, 2012 as a part-time customer service representative. On August 7, 2012, an assistant manager, Patty, called Ms. Martin and told her to come into the store to sign a reprimand for being no-call/no show to work on July 29, 2012. When Ms. Martin came in Patty was not present but Assistant Manager Alejandra Silva was on duty and gave her the reprimand. The claimant asserted she had been fired by Patty.

Ms. Silva notified Store Manager Briannetta Willis about the situation and the manager requested her to call Ms.. Martin and set up a time for her to come in so they could talk about the problem. Ms. Silva did so but Ms. Martin declared she had consulted with a lawyer and would not come back in because she refused to work with Patty.

Later Ms. Willis called and spoke with the claimant directly. The manager assured Ms. Martin that only the manager, not an assistant manager, had the authority to fire anyone, and she did not intend to fire the claimant. She assured the claimant the schedule would be arranged so she would not have to work with Patty but Ms. Martin refused to return to work and she was going to “take everything” to Workforce Development.

Jaylynn Martin has received unemployment benefits since filing an additional claim with an effective date of August 5, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant asserts she was discharged by an assistant manager but the record establishes the manager assured her she was not fired because only managers, not assistant managers, have the authority to discharge employees.

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.

The claimant must be considered a voluntary quit as she admitted she was asked to come back into the store and discuss the matter with the manager. This would not occur if the employer discharged her. It is apparent the manager did not intend to fire her and wanted to schedule things with her staff so people could work together well and improve the store's performance.

Ms. Martin's refusal to return to work is a voluntary quit without good cause attributable to the employer and she is disqualified.

The administrative law judge notes the claimant consulted with a lawyer who allegedly advised her not to return to work. No assessment can be made about this without knowing exactly what facts Ms. Martin put before this attorney.

**DECISION:**

The representative's decision of August 23, 2012, reference 04, is reversed. Jaylynn Martin is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css