

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARB J CURTIS
Claimant

APPEAL NO. 08A-UI-04754-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
DOLLAR GENERAL
Employer

OC: 03/30/08 R: 04
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

DolGenCorp, Inc. / Dollar General (employer) appealed a representative's May 5, 2008 decision (reference 01) that concluded Barb J. Curtis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2008. The claimant participated in the hearing. Terry Bigalk appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 16, 2001. She worked full time (35 – 40 hours) as a lead clerk in the employer's Cresco, Iowa store. Her last day of work was March 25, 2008.

Since becoming a lead clerk in approximately March 2005, the claimant had arranged to work usually only one evening per week and then two weekend evenings every third weekend. On March 26 the claimant and Mr. Bigalk, the store manager, were reviewing changes being made to the employer's scheduling. In order to keep the claimant close to 40 hours per week, the employer indicated the claimant would need to be scheduled to work four or five nights (working until an 8:00 p.m. close) weekly. The claimant indicated she could not do that at that time due to childcare arrangements. The employer then suggested the claimant could go to part-time status, which typically would be about 30 hours per week. The claimant indicated she needed to work closer to 40 hours per week. As the changes in the scheduling were to go into effect immediately, the claimant asked if she could take some vacation time in order to see if she could obtain childcare that would allow her to work the evening shifts, but the employer denied the claimant's request. As a result, the claimant tendered her resignation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A “contract of hire” is merely the employment arrangement agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a “contract of hire” to exist. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for determining it needed to change the way it did scheduling for its full-time employees, the change in the claimant’s hours that would have been implemented either if she had been required to work the four to five nights per week in order to remain full time or the cut in her hours and wages if she had been compelled to go to part-time status would have been a substantial change in the claimant’s contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative’s May 5, 2008 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw