

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA CUMMINGS

Claimant

APPEAL NO: 09A-UI-11570-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC

Employer

OC: 06-14-09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 2009, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 6, 2009. The claimant participated in the hearing with Dollar General Employee Megan Guritz. Tina Adams, Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Dollar General from August 14, 2008 to June 24, 2009. She accepted a part-time position with Kentucky Fried Chicken (KFC) and told the employer KFC would work around her Dollar General schedule. The claimant was unhappy with the employer for various reasons and when she went in June 23, 2009, the employer felt she had an attitude and told her if she was going to have that attitude she could go home and the claimant left. The claimant called the employer later that day and asked if she was scheduled and the employer told her she could work 10:00 a.m. to 3:00 p.m., June 23, 2009, but the claimant never called or showed up again. The claimant testified the employer terminated her employment after telling her she did not like her attitude and she was done although Manager Tina Adams, who spoke to the claimant, did not have the authority to discharge an employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant effectively admitted she had an "attitude" because of previous interactions with Ms. Adams the parties disagree about how the claimant's employment ended. The claimant testified her employment was terminated by Ms. Adams when she said, "If you are going to have that attitude you can go home." Ms. Adams, however, credibly testified she did not have the power to fire an employee and that she told the claimant to go home if she was going to have an "attitude" but told her she was scheduled the following day for which the claimant did not call or show up. Under these circumstances the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer as required by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 3, 2009, reference 04, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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