

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

NANCY J KAAIHUE
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WATERLOO IA 50703

FAMILY DOLLAR STORES OF IOWA INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

AMENDED
Appeal Number: 04A-UI-08217-DT
OC: 07/04/04 R: 03
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, 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 Leaving
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Family Dollar Stores of Iowa, Inc. (employer) appealed a representative's July 23, 2004 decision (reference 01) that concluded Nancy J. Kaaihue (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2004. The claimant participated in the hearing. Lyle Calease appeared on the employer's behalf and presented testimony from one other witness, Tatiana Moore. During the hearing, Employer's Exhibit One was entered into evidence. 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: Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 8, 2004. She worked full time as assistant manager of the employer's Waterloo, Iowa store. Her last day of work was April 10, 2004.

The claimant was scheduled to work after April 10, but on April 10, she left a note for Mr. Calease, the Store Manager, indicating, "I will not be in at all." On April 12, the claimant went into the store, going to the office briefly and then leaving. Mr. Calease saw her and told her that he needed to talk to her. She waived him off, indicating she had to go to an appointment. She did not subsequently contact Mr. Calease. Mr. Calease then discovered that the claimant had dropped off her keys in the office. Later that day the claimant slipped a doctor's note indicating that she would be off work for one week under the office door.

At least on April 20 and potentially again on April 28, the claimant slipped notes under the office door indicating that she was released to return to work with a ten-pound lifting restriction. However, she did not present herself for work and did not contact Mr. Calease about returning to work. When the claimant did not contact him or present herself to return to work, Mr. Calease concluded that she had quit, further substantiated by comments that the claimant had made to other employees on or about April 8 that that would be her last week and that April 10 would be her last day, as she was going back to school. Approximately on May 1, Mr. Calease determined to fill the claimant's position. When the claimant learned that Mr. Calease was filling her position, she determined that she had been discharged, and did not consider further contact with the employer.

The claimant established a claim for unemployment insurance benefits effective July 4, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,358.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

Where an individual mistakenly believes that she or he is discharged and discontinues reporting to work, but was never told she or he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

Inasmuch as the employer had not told the claimant she was fired and the claimant failed to return or contact the employer in order to determine the status of her employment relationship with the employer, in addition to her prior comments regarding quitting and leaving her keys, she acted in a manner such that the employer would reasonably believe she had resigned her position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code Section 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

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.

DECISION:

The representative's July 23, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 28, 2004, benefits are withheld until such time as the claimant 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 been overpaid \$1,358.00.

ld/pjs/tjc