

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIKA M GRUBBS
Claimant

APPEAL NO. 13A-UI-13182-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

OC: 10/27/13
Claimant: Appellant (4-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Erika Grubbs filed a timely appeal from the November 27, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 18, 2013. Claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the agency's administrative record (APLT and Clear2There Hearing Control screen) that documents the employer's failure to provide a telephone number for the hearing.

ISSUE:

Whether Ms. Grubb's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Erika Grubbs was employed by Dollar Tree on a part-time basis from 2007 until August 1, 2013, when she voluntarily quit. In February 2012, Ms. Grubbs had transferred from a store in Illinois to the employer's Davenport store at the request of the employer. At the time Ms. Grubbs left the Illinois store, she was receiving 32-35 hours per week. Ms. Grubbs acquiesced in the transfer to the Davenport store with the understanding that she would receive roughly the same number of work hours at the Davenport store as she had received at the Illinois store. However, Ms. Grubbs instead generally received 22-25 hours per week at the Davenport store. Ms. Grubbs' work hours stayed at this level during the last five to six months of the employment. Ms. Grubbs' wage at the Illinois store had been \$9.70. Her final wage at the Davenport store was \$9.85.

While Ms. Grubbs worked at the Davenport store, her title was Assistant Store Manager. Ms. Grubbs' immediate supervisor during the last year of the employment was Claudette Harris, Store Manager. The Davenport store also had a full-time Assistant Manager. Ms. Grubbs was third in command at the store. The store also employed cashiers. Ms. Grubbs was responsible for supervising one or more cashiers when she was in charge of running the shift.

The events that triggered Ms. Grubbs' voluntary quit occurred on Sunday, July 28, 2013. The store's hours that day were 10:00 a.m. to 7:00 p.m. Ms. Grubbs was assigned to run the store that day. A cashier, Sandy, was also working at the store that day. Around 11:00 a.m. or 11:30 a.m., Ms. Grubbs and Sandy got into a disagreement over Sandy's desire to take a smoke break. Ms. Grubbs told Sandy that she could not go outside to take a break without first notifying the manager, Ms. Grubbs, that she was doing so. The employer had a policy that prohibited leaving the store with only one staff member inside. Sandy disregarded Ms. Grubbs' directive and went outside for her break anyway. Sandy had worked for the store for five years. Before Sandy went outside to take her break, she told Ms. Grubbs to give her regards to Wendy Weston, Area Supervisor, when Ms. Grubbs called Ms. Weston. Sandy was being flip and was sending a message that she did not expect much to come of Ms. Grubbs reporting her behavior.

When Ms. Grubbs could not get Sandy to comply with her directive, Ms. Grubbs telephoned Ms. Harris. Ms. Harris was scheduled off that day. When Ms. Grubbs contacted Ms. Harris, Ms. Harris was traveling or from church. Ms. Grubbs explained the situation to Ms. Harris. Ms. Harris reminded Ms. Grubbs that she was off work that day, but agreed to come to the store. Ms. Harris told Ms. Grubbs that she was out at the time and would need time to get to the store. Ms. Grubbs understood Ms. Harris to live about 15 minutes from the store. Ms. Harris arrived at the store within 30 minutes to an hour after Ms. Grubbs called her.

When Ms. Harris got to the store, she took Sandy to the back and the pair spoke for five to 10 minutes while Ms. Grubbs stayed up front to assist customers. Ms. Harris then came to the front of the store where Ms. Grubbs was located. Ms. Harris told Ms. Grubbs that she had spoken to Sandy and that "everything is squashed." Ms. Harris told Ms. Grubbs that Sandy was going to apologize to Ms. Grubbs. Ms. Grubbs was upset that she had been left out of the counseling session between Ms. Harris and Sandy. Ms. Grubbs pointed out that she did not get to hear what was said during the counseling session. Ms. Harris told Ms. Grubbs that she did not know why Ms. Grubbs was upset or angry. Ms. Grubbs said she was going to contact the area manager. Ms. Harris then left the store. This exchange between Ms. Grubbs and Ms. Harris took place in the vicinity of customers.

Later in the shift, Ms. Grubbs drafted a resignation letter. Ms. Grubbs left the resignation letter in the safe for Ms. Harris to find the next day. Ms. Grubbs also transmitted a copy of the resignation letter to Ms. Weston and to the District Manager, Steven Rhodes.

Ms. Grubbs had started a second part-time job in May 2013. Ms. Grubbs otherwise had no other employment during her tenure with Dollar Tree.

REASONING AND CONCLUSIONS OF LAW:

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(6), (21), (22) 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:

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The evidence establishes that Ms. Grubbs voluntarily quit the employment for two reasons. The primary reason for the quit was Ms. Grubbs' dissatisfaction with Ms. Harris' handling of the matter concerning the clerk's conduct. Under the circumstances, Ms. Harris' handling of the matter was reasonable and did not create intolerable or detrimental working conditions for Ms. Grubbs. The store only had two people working on the day in question. Ms. Harris responded to Ms. Grubbs' call for assistance in a timely manner and took the offending clerk aside to discuss the conduct. It was necessary for Ms. Harris to leave Ms. Grubbs at the front of the store to attend to the needs of customers. While Ms. Grubbs might have preferred to be present for the counseling session, Ms. Harris did the next best thing. She reported back to Ms. Grubbs that she had addressed the matter and, to soothe the situation, told Ms. Grubbs that the offending clerk would be offering an apology.

The second issue Ms. Grubbs cites as the basis for her quit is the reduction in work hours that followed her transfer to the Davenport store in February 2012.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence does indeed establish that substantial changes in the conditions of the employment occurred in connection with the transfer to the Davenport store. Those included the transfer itself, along with the reduction in work hours. However, after the changes occurred, Ms. Grubbs elected to remain in the employment for several months. By doing so, Ms. Grubbs effectively acquiesced in the changes.

Ms. Grubbs voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Grubbs is disqualified for benefits *based on base period wages from Dollar Tree Stores, Inc.*, until 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 employer's account shall not be charged for benefits.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because the quit was from part-time employment, Ms. Grubbs remains eligible for benefits, based on base period wage credits from employers other than Dollar Tree, provided she is monetarily eligible and meets all other eligibility requirements. This matter will be remanded to the Claims Division for determination of Ms. Grubbs eligibility for reduced benefits.

DECISION:

The Agency representatives November 27, 2013, reference 02, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on the Dollar Tree base period wages until 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 employer's account shall not be charged. Because the quit was from part-time employment, the claimant remains eligible for benefits based on base period wage credits other than those from Dollar Tree provided she is monetarily and otherwise eligible for such benefits. This matter is remanded to the Claims Division for determination of claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs