

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

ALAN W MESSELT  
326 COURTLAND ST APT 5  
WATERLOO IA 50703

DOLGENCORP INC  
DOLLAR GENERAL  
C/O COMP TAX MANAGER  
PO BOX 34150  
LOUISVILLE KY 40232

Appeal Number: 05A-UI-03836-BT  
OC: 03/06/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Dollar General (employer) appealed an unemployment insurance decision dated April 6, 2005, reference 02, which held that Alan Messelt (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2005. The claimant participated in the hearing. The employer participated through Deb Soles, Store Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cashier/stocker from February 25, 2004 through May 24, 2004. He was considered to have voluntarily quit his employment after he was a no-call/no-show for five consecutive workdays. The employer's attendance policy provides that employees are considered to have voluntarily quit after three days of no-call/no-show. The claimant worked on May 12 and went to get his paycheck on May 14, 2004. He was scheduled to work on May 15, 16, 17, 18, and 19. He did not call or report to work and the employer called him but was unable to reach him. The claimant went to work to pick up his paycheck on May 21, 2004 and asked if he still had a job but was told he was considered to have voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective March 6, 2005 and has received benefits after the separation from employment in the amount of \$448.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant contends he did not work after May 12, 2004 because of a previous injury to his ankle but claims he reported his absences. The employer knew nothing about an injured ankle and tried to contact him when he was absent but could not reach him. The employer's testimony was found more reliable due to the fact that the employer was relying upon written documentation while the claimant could not clearly remember the dates and other facts. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980); Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he was a no-call/no-show for five consecutive work days. The law presumes it is a quit without good cause attributable to the employer when an employee was absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated April 6, 2005, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$448.00.

sdb/pjs