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

MIKE D FIELDS
409 – 14TH ST NW
MASON CITY IA 50401

FAMILY DOLLAR STORES OF IOWA INC
STORE #1424
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-00616-RT
OC: 12-11-05 R: 02
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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Family Dollar Stores of Iowa, Inc., store number 1424, filed a timely appeal from an unemployment insurance decision dated January 9, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Mike D. Fields. After due notice was issued, a telephone hearing was held on February 1, 2006, with the claimant participating. David Moore, District Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently beginning July 31, 2005, as a store manager, from July 20, 2005 until he voluntarily quit effective October 24, 2005. The claimant was initially hired as an assistant manager but became the store manager on July 31, 2005. The claimant was the store manager at store number 4844 in Mason City, Iowa. On October 18, 2005, the claimant sent an e-mail to the employer's witness, David Moore, District Manager, informing him that the claimant was getting another job which would better serve his school needs and that because his school grades were dropping and his education came first he was quitting effective October 22, 2005. The claimant then followed this e-mail with another e-mail extending the effective date of his quit to October 29, 2005. However, on October 24, 2005, when Mr. Moore arrived at the Mason City, Iowa, store, the claimant was not in uniform and was at the cash register and said he was no longer going to work for the employer because of the same reasons given in the e-mail, that he had another job which was more suitable to his schooling and that his grades were dropping and his education came first. The claimant also indicated that he had heard that the new manager was going to get the training that the claimant believed he had not gotten and the claimant was mad. The claimant then left the store that day, October 24, 2005.

The claimant now testifies that he quit because he was not getting the training that he repeatedly requested. The claimant became the store manager on July 31, 2005, and had difficulties with things such as displays and paperwork and bookkeeping. Concerning the store displays, the employer had guidelines that the claimant could follow, but then the claimant testified that he simply could not finish all of the displays in the time allotted. Concerning the bookkeeping and day-to-day operations, the employer had "training strands" that the claimant could review. These were in writing. Whether the claimant could take these home as a manager is uncertain, but the claimant could not take them home with him as an assistant manager. Mr. Moore went to the store in Mason City, Iowa, twice a month at least and was available to answer any questions that the claimant had. The claimant did have questions and Mr. Moore attempted to help the claimant. On those occasions Mr. Moore would grade the store and the store's grades were acceptable. Mr. Moore was satisfied with the claimant's performance and thought that the claimant was doing a good job. On one occasion a manager was sent to the claimant's store to help train him but apparently that was an apparel markdown day and the manager assisted the claimant in marking down the items for the markdown day. Obtaining training for the claimant would be costly to the employer because the claimant was not a new employee hired directly into a store manager position but rather he was an assistant manager promoted to the store manager position. Nevertheless, Mr. Moore was working on obtaining the training that the claimant was requesting. Pursuant to his claim for unemployment insurance benefits filed effective December 11, 2005, the claimant has received unemployment insurance benefits in the amount of $1,728.00 as follows: $288.00 per week for six weeks from benefit week ending December 17, 2005, to benefit week ending January 21, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.

2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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(21), (26), (33) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (26) The claimant left to go to school.
>
> (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

871 IAC 24.26(2), (3), (4) 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:
>
> (2) The claimant left due to unsafe working conditions.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on October 24, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. When the claimant initially resigned in an e-mail sent to the employer's witness, David Moore, District Manager, on October 18, 2005, the claimant stated that he was quitting to get another job that was more conducive to his schooling and that his grades at school were dropping and that his education

came first. The claimant repeated this when he quit on October 24, 2005, even in advance of his effective resignation date.

The claimant now testifies that he left his employment because he was not getting the training that he had repeatedly requested. The claimant did request some training, and Mr. Moore was attempting to obtain that for him. In the meantime Mr. Moore came to the claimant's store at least twice a month and was there to answer any questions the claimant had and did answer questions the claimant had. The employer also had "training strands" in writing to help train the claimant. The employer also provided, at least on one occasion, a manager from another store to come in and help the claimant. The claimant testified that this was not particularly fruitful because it occurred on an apparel markdown day and the manager helped the claimant simply mark down apparel. Nevertheless, the employer was attempting to address the claimant's concerns. The claimant testified that he needed training on things such as setting up store displays but the claimant conceded that the store had guidelines in writing and that he could follow them but then stated that he did not have time to get everything done in the period allotted. This does not seem to be a training matter. The claimant also said that he needed training in bookkeeping and day to day operations but even the claimant conceded that he had books as well as the "training strands" to assist him. Mr. Moore credibly testified that training for the claimant was costly because the claimant was promoted from assistant manager rather then being brought in directly as a full manager. Nevertheless Mr. Moore was working on obtaining the training for the claimant.

First, the administrative law judge concludes that the claimant really quit because of his schooling and the dropping of his grades. The claimant eventually conceded that when he sent his first e-mail message resigning that he stated in that message that he was resigning because he had another job that would work better with his schooling and that his grades were dropping and his education came first. This was also repeated to Mr. Moore when the claimant quit effective October 24, 2005. The claimant's testimony now that he quit because of the training is not particularly credible. The claimant had no explanation as to why he put in his resignation e-mail the schooling and the dropping of the grades when he was actually quitting because of the training. The claimant even at one point testified that he did not intend to quit but was merely doing it so as to get the training he had requested. Again, this does not seem credible and seems illogical to submit a written resignation when one does not want to resign. Leaving work voluntarily to go to school is not good cause attributable to the employer. There was some evidence that the claimant felt that he was not performing his job appropriately but Mr. Moore disagreed and felt that the claimant's performance was good and informed the claimant of that. The claimant even concedes that Mr. Moore had told him he was doing a good job. Leaving work voluntarily when the claimant feels that his job performance was not to the satisfaction of the employer is not good cause attributable to the employer when the employer has not requested the claimant to leave and continued work was available. Continued work here was certainly available. There was also some evidence that the claimant was dissatisfied with his work environment but again this is not good cause attributable to the employer. The claimant testified that he did not have a job in hand when he quit but he did so state in his e-mail resignation. In any event, leaving work voluntarily to seek other employment but not securing employment is not good cause attributable to the employer. See 871 IAC 24.25 (3). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on October 24, 2005, without good cause attributable to the employer.

Even assuming that the claimant quit, at least in part, for his training, the administrative law judge must conclude on the evidence here that the claimant has not demonstrated by a preponderance of the evidence that his working conditions as a result of the training were

unsafe, unlawful, intolerable or detrimental. The claimant's job performance was acceptable to the employer and the employer even felt that the claimant was doing a good job. There was also evidence that there were training materials available to the claimant at the store including guidelines for displays and books and "training strands." Although it is uncertain whether the claimant could have taken the "training strands" home with him, they were available to the claimant. Further, Mr. Moore came out to the claimant's store at least twice a month and was available to help the claimant on those occasions. In fact, the store manager at another store was sent to the claimant's store to help train the claimant. The claimant felt it was not satisfactory because it was apparel markdown day and the store manager helped the claimant mark down the apparel. Nevertheless, the manager was there to help the claimant and the employer was attempting to address the claimant's requests for training. There is also not a preponderance of the evidence that the employer breached the claimant's contract of hire. Accordingly, the administrative law judge concludes that the claimant's professed lack of training did not establish that his working conditions were unsafe, unlawful, intolerable, or detrimental or subjected the claimant to a substantial change in his contract of hire and these reasons were not good cause attributable to the employer for the claimant's quit.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily on October 24, 2005, without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of $1,728.00 since separating from the employer herein on or about October 24, 2005, and filing for such benefits effective December 11, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 9, 2006, reference 01, is reversed. The claimant, Mike D. Fields, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause

attributable to the employer. The claimant has been overpaid unemployment insurance benefits in the amount of $1,728.00.

kkf/kjw