

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN K SHORT**  
Claimant

**APPEAL NO. 11A-UI-16325-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLLAR TREE STORES INC**  
Employer

**OC: 11/13/11**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 13, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 23, 2012. Claimant Robin Short participated. Kristina Christian represented the employer and presented additional testimony through Keith West.

**ISSUE:**

Whether Ms. Short separated from the employment for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robin Short was employed by Dollar Tree Stores, Inc., from 2008 until October 29, 2011. Ms. Short started as a part-time stocker at the employer's 22nd Street store in West Des Moines. During the summer of 2010, Ms. Short was promoted to full-time assistant manager at the employer's Waukee store. Ms. Short continued in the position of full-time assistant manager at the Waukee store until her separation from the employment. On October 24, 2011, Kristina Christian started at the Waukee store as store manager. Up to that time, Ms. Christian had been assistant manager at the employer's Merle Hay store. Keith West was district manager over the Waukee store and others.

As soon as Ms. Christian started at the Waukee store, there was interpersonal conflict between Ms. Short and Ms. Christian. On Thursday, October 27, Ms. Short left work early without permission and without counting her cash drawer, in violation of company policy. Ms. Short was aware of this company policy. Ms. Short left after she got into an argument with Ms. Christian over preparing the schedule. Ms. Short wanted to help prepare the schedule. Ms. Christian told Ms. Short that Mr. West wanted her to prepare the schedule by herself. Ms. Short wanted to give away half of her full-time hours to one or more part-time employees.

Mr. West was aware of the interpersonal conflict between Ms. Short and Ms. Christian. Mr. West had notified Ms. Short and Ms. Christian that he would be at the Waukee on Friday afternoon, October 28 to iron out the problems between them. At 8:30 a.m. on October 28,

Ms. Short telephoned Mr. West to say that she had an unspecified emergency that she had to attend to at noon. Mr. West arrived at the Waukee store at 11:45 a.m. Ms. Short told Mr. West that she was sorry that the previous manager had left, that she did not like a few things Ms. Christian was doing. Ms. Short was in a hurry and left the workplace shortly after Mr. West arrived. Ms. Short's husband has kidney disease and the employer was aware of this. Ms. Short did not mention her husband's illness as the basis for her need to leave early on the Friday. Ms. Short again left without counting her cash register drawer, in violation of company policy.

Ms. Short was next scheduled to work on Saturday, October 29 at 1:00 p.m. At 10:16 a.m., Ms. Short telephoned Ms. Christian and told her she was sick and was not able to work that day. Ms. Christian told Ms. Short that Ms. Christian would have to see whether Ms. Christian could find someone to cover her shift. A short while later, Ms. Christian called back and left a message on Ms. Short's phone. The message was that there was no one else to work the shift and that Ms. Short had to work the shift. After Ms. Short listened to the message, she got in her car and went to the Waukee store. Ms. Christian was out in front of the store smoking a cigarette and talking on her phone. Ms. Short took her store keys out of her pocket, handed them to Ms. Christian, and told her she could not do it anymore. Ms. Short then left.

A short while later that same day, Ms. Short called Mr. West. Ms. Short told Mr. West that she had called in sick to Ms. Christian and that Ms. Christian had told her she needed to work. Ms. Short told Mr. West that she was sorry, but that she had to turn in her keys. Ms. Short offered as the reason for her absence that she had "boils on her ass." During the call, Ms. Short had asked whether she had been facing a written reprimand. Mr. West told her yes, based on unauthorized absence on the Friday, the failure to count her drawer, and the fact that her drawer was short.

A few days later Mr. West received an e-mail message from the employer's human resources manager. Ms. Short had called the employer's "care line" to indicate that her absence on Saturday, October 29 was due to the flu.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence establishes that Ms. Short voluntarily quit the employment due to dissatisfaction with Ms. Christian's promotion to Store Manager at the Waukee store and due to a personality conflict with Ms. Christian. The administrative law judge found a number of reasons to question the reliability and credibility of critical aspects of Ms. Short's testimony. Prior to handing over her keys on October 29, Ms. Short had stormed out of the workplace on October 27 and then had found a reason to cut her workday short on October 28. On both days, she knowingly violated company policy by leaving early without authorization and without counting her drawer. The evidence does not support Ms. Short's assertion that she had to leave early on the Friday to attend to her husband's medical needs. During that portion of

Ms. Short's testimony where she was asked the reason for her early departure on the Friday, the administrative law judge noted multiple distinct pauses in Ms. Short's answer that strongly suggested she was fabricating the answer as she gave it. Other aspects of that same testimony suggest disingenuous reference to the husband's bona fide illness for purposes of the unemployment insurance hearing. The weight of the evidence indicates that Ms. Short fabricated an "emergency" on the Friday so that she would not have to stick around for a meaningful discussion with Mr. West and Ms. Christian about the new management hierarchy or her subordinate role in that hierarchy. Ms. Short was clearly unhappy that Ms. Christian had been installed as manager of the Waukee store. This is indicated by the argument over who was going to write the schedule, the abrupt early departures, and the attempt to dump half her hours. Most of Ms. Short's behavior on October 27-29 only makes sense in the context of someone gearing up to leave employment. The evidence suggests that Ms. Short was envious of Ms. Christian's promotion and that she was unwilling to accept a role subordinate to Ms. Christian.

The weight of the evidence fails to support Ms. Short's assertion that she was unable to work on October 29 due to illness. On October 29, Ms. Short said nothing to Ms. Christian regarding the nature of her illness. Despite the alleged illness, Ms. Short was able to drive several miles from her home in Booneville to the store in Waukee. A short while later, Ms. Short called Mr. West to say she had turned in her keys and offered that she had boils on her rear. Ms. Short took the opportunity, despite alleged illness, to ask whether she had been in line to receive a written reprimand for her earlier absences. At some point after speaking to Mr. West, Ms. Short reported the illness to the corporate care line as the flu. At the hearing, Ms. Short suggested yet another possible illness, food poisoning. Ms. Short's statements to the employer in this regard, and her testimony, again suggest a fabrication. Ms. Short's action of getting in her car, driving to the workplace, and handing over her keys is inconsistent with the notion that she had a bona fide illness that prevented her from working and entirely consistent with the notion that she was fed up and had decided to quit.

The evidence fails to support Ms. Short's assertion that Ms. Christian "took" her keys when Ms. Short went to the store on October 29. Ms. Christian had just started as a store manager and had just started at the Waukee store. Ms. Christian wanted Ms. Short to come to work. Ms. Short took her keys out of her pocket of her own volition, not in response to a request for them, and handed them to Ms. Christian at the same time she told her she could not work there anymore.

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.

When an employee quits due to dissatisfaction with employment, inability to work with another employee, or a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6), (21), and (22).

Ms. Short voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Short is disqualified for benefits 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 paid to Ms. Short.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's December 13, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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