

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE D MCFALLS**  
Claimant

**APPEAL NO: 19A-UI-00987-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 12/30/18**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 1, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 19, 2019. The claimant participated in the hearing. The employer provided a telephone number prior to the hearing but was not available at that number when called back after the claimant called in for the hearing and did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant voluntarily quit her job for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time store manager for Dolgencorp (Dollar General) from August 16, 2006 to November 8, 2018. She voluntarily left her employment due to the working conditions of the store.

The store was perpetually short-staffed because applicants either could not pass the pre-employment drug screen or background check or if they did so they voluntarily quit because they were scheduled excessive hours. As a result of the store being short-handed, the claimant worked three days per week from 6:00 a.m. to 10:30 or 10:45 p.m. The other days she worked from 7:30 a.m. to 10:30 or 10:45 p.m. The other stores were short-staffed as well and consequently could not send any employees to help with hours at the claimant's store. Breaks and meal periods were rare and sometimes she could not even get away to use the restroom. She very rarely had a day off.

The claimant went on FMLA at the beginning of August 2018, due to exhaustion. She was due to return from her leave November 10, 2018. She went into the store November 8, 2018, and was told inventory was to be completed November 10, 2018. The store was not ready and

because there was no change in the staffing situation the claimant decided she needed to resign her position effective immediately.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 1 (Iowa 2005).

871 IAC 24.26(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:

(4) The claimant left due to intolerable or detrimental working conditions. In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent-to-quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The employer was continually short-staffed and regardless of what the claimant did to try to staff the store it was not successful. Working from 6:00 a.m. to 10:30 or 10:45 p.m. three days per week and from 7:30 a.m. to 10:30 or 10:45 p.m. at least three other days per week with few days off is unreasonable. Additionally, the claimant was rarely afforded the opportunity for breaks or meals and sometimes could not even use the restroom.

Under these circumstances, the administrative law judge finds the working conditions were detrimental and intolerable to the claimant or to any reasonable person in general. The claimant has met her burden of proving her leaving was for good cause attributable to the employer. Therefore, benefits are allowed.

**DECISION:**

The February 1, 2019, reference 01, decision is reversed. The claimant voluntarily left her employment for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn