

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

VICKY J ATKINSON
221 E SUMMIT
WINTERSET IA 50273

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

Appeal Number: 04A-UI-02641-DWT
OC 02/08/04 R 02
Claimant: Respondent (1)

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 are 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-a – Voluntary Quit

STATEMENT OF THE CASE:

Dollar General (employer) appealed a representative's March 3, 2004 decision (reference 01) that concluded Vicky J. Atkinson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2004. The claimant participated in the hearing. Deb Calhoun, the district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 28, 2002. She worked as a part-time cashier, 10 to 15 hours a week. Billy Smith became the claimant's supervisor in September 2003. The claimant worked day hours.

In late September 2003, the claimant noticed her paycheck was 2.25 hours short. The claimant talked to Smith about the discrepancy. Smith did not make any changes. Instead, she told the claimant her clock-in and clock-out times were only estimates, which neither the claimant nor the employer could rely upon. The claimant learned Smith changed the claimant's time cards. Smith enforced a policy that required employees to take a 30-minute unpaid lunch break. When the claimant had to work through her lunch break, she expected to get paid for working. The claimant also learned Smith changed her time card to reflect she left work at the time she was scheduled to leave work even she worked later. For example, if the claimant was scheduled to work until 7:30 p.m., but actually worked until 7:50 p.m., Smith changed the claimant's time card to show she punched out at 7:30 p.m. instead of 7:50 p.m. The claimant called corporate office about not getting paid for all the work she performed, but was told to contact the district manager. The claimant did not contact Calhoun because she understood Calhoun was a personal friend of Smith's. The claimant did not have any problems getting paid for all the hours she worked until Smith became her supervisor.

The claimant took on added responsibilities of a third-shift lead. This meant she was required to work some nights. The claimant agreed to take the job if the employer only scheduled her to work evenings on the weekends but not evenings during the week. The claimant's husband also works evening and it cost the claimant too much in childcare if she worked evenings during the week. Smith agreed the claimant would be scheduled to work only weekend evening shifts.

This arrangement worked for a while. In about November, the employer started scheduling the claimant to work nights during the weekends and during the week. The employer told the claimant this would be a temporary situation. As of the week of January 6, the claimant was still scheduled to work evenings during the week.

On January 6, 2004, the claimant was angry and upset about events that had recently happened. Initially, the claimant had been scheduled to work 18 hours the week of January 6. She became frustrated when an assistant manager told her that instead of working about 18 hours during the week, the employer only needed her for a couple of hours on Wednesday, Thursday and Friday night. The claimant had also noticed a written warning the employer had prepared but had not yet given the claimant for failing to stock all the product on the previous Sunday.

On January 6, the claimant left the employer a note indicating she was quitting effective immediately. The claimant quit because she could not afford to work all the nights the employer scheduled her to work, she had not agreed to work evenings during the week, only during the weekends, the employer was going to give her a written warning the claimant did not believe was justified and the employer did not pay her for all the time she worked. From late September through early January, the employer had not paid the claimant for some plus 15 hours she had worked.

After the claimant quit, she filed a wage complaint. Prior to the hearing, the employer paid the claimant for time she had worked but had yet been paid.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit her employment on January 6, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit when there is a substantial change in the employment contract. 871 IAC 24.26(1). The claimant quit for several reasons, some of which do not constitute good cause. The fact the claimant quit because she was going to receive a written warning and could not afford childcare costs do not establish good cause to quit. But, when an employer fails to pay an employee for all hours worked and an employee agrees to take on additional job responsibilities under certain conditions and the employer does not follow the agreed upon conditions, a claimant has good cause to quit.

In this case, the employer changed the claimant's timecard by reducing the hours on her timecard to reflect she had not worked as many hours as she reported. The effect of this action resulted in the claimant working hours the employer did not pay her for. Although the claimant brought this to the manager's and to management's attention, the employer did nothing about paying the claimant for all the hours she worked until she brought a wage claim against the employer.

The employer also substantially changed the employer's employment contract when the employer started scheduling the claimant evening hours during the week instead of just the weekend as the claimant and employer agreed she would work. The situation became aggravated when the employer reduced the claimant weekday evening hours to just two hours on nights she was scheduled to work. The problems with the claimant's wages and schedule amount to a substantial change in the claimant's employment contract. The claimant established good cause for quitting work. Therefore, as of February 8, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 3, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of February 8, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b