

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUCINDA M MOORE**  
Claimant

**APPEAL NO. 10A-UI-13551-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
**DOLLAR GENERAL**  
Employer

**OC: 08/08/10**  
**Claimant: Respondent (1)**

871 IAC 24.1(113) – Other Separations  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 22, 2010, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 16, 2010. Claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUES:**

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Dollar General as a full-time assistant manager/cashier. In December 2009 or January 2010, the claimant was off work pursuant to an approved leave of absence in connection with the need to undergo surgery on her right shoulder. The shoulder surgery was non-work-related. The claimant was released to return to work with a 20-pound permanent lifting restriction and attempted to return to the employment, but the employer would not allow her to return to work with the lifting restriction. The employer insisted that the claimant return only when she did not have a lifting restriction. The claimant had not intended to leave the employment and had not notified the employer that she intended to leave the employment. The claimant commenced a search for new employment and was able to locate a new, part-time position. The claimant has continued to search for full-time employment.

## REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 employer failed to participate in the hearing and thereby failed to present any evidence whatsoever. The weight of the evidence indicates that the claimant separated from the employment because she was no longer able to meet the physical demands of the employment after a 20-pound permanent lifting restriction was imposed. The claimant's separation falls within the category of separations known as "other separations." The claimant's separation, based on her inability to perform the physical demands of the work, would not disqualify her for unemployment insurance benefits. The claimant would remain eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant's 20-pound lifting restriction does not prevent her from being able to perform many types of work that workers perform in the labor market and would not prevent her from meeting the work ability or availability requirements of the law. In addition, the claimant demonstrated her ability to work by securing the new part-time employment. The claimant has actively and earnestly engaged in a search for new full-time employment. The claimant is eligible for benefits effective August 8, 2010, provided she is otherwise eligible.

**DECISION:**

The Agency representative's September 22, 2010, reference 03, decision is affirmed. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due her inability to meet the physical requirements of the employment. The claimant has been able to work and available for work, as required by Iowa Code section 96.4(3), since establishing her claim for benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs