

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY L DISHMAN
Claimant

DOLGENCORP LLC
Employer

APPEAL 20A-UI-06837-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tiffany Dishman (claimant) appealed a representative's June 11, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Dolgencorp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2020. The claimant participated personally. The employer participated by Jesse Kelsay, District Manager and Holly Barnes, Store Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in 2019, as a part-time lead sales associate. She signed for receipt of the employer's handbook when she was hired. The claimant had health issues and a doctor's note restricting her work but did not provide the employer with a copy of the note. She told the supervisor she could not work on a ladder or lift thirty pounds. The supervisor accommodated the claimant. The employer never had the claimant work on a ladder or lift thirty pounds or more.

The claimant's last day of work was February 9, 2020. The supervisor scheduled the claimant for her regular three or four days per week but the claimant called in sick. The claimant complained to the supervisor that she was not getting enough hours. Eventually the claimant stopped calling in or appearing for work. The claimant was considered to have self-terminated. Continued work was available had the claimant not resigned.

The claimant stopped appearing for work because on an unknown date she thought the supervisor had her work outside of her medical restrictions. The claimant was unsure of the date of her doctor's note or what her doctor's note said.

The claimant filed for unemployment insurance benefits with an effective date of April 26, 2020. Her weekly benefit amount was determined to be \$162.00. The claimant received benefits of \$162.00 per week from April 26, 2020, to the week ending June 6, 2020. This is a total of \$972.00 in state unemployment insurance benefits after the separation from employment. She also received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending June 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing and reporting her absences. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was under a doctor's restriction which allowed her to work. There was no indication she could not work with the restriction. The claimant is considered able and available for work.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she

is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

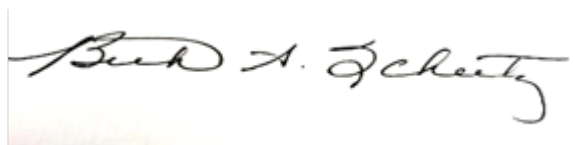
The issue of whether claimant has been overpaid unemployment insurance benefits and federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's June 11, 2020, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits and federal pandemic unemployment compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

August 5, 2020
Decision Dated and Mailed

bas/scn