

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN L BERGIN
Claimant

APPEAL NO. 17A-UI-09048-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 08/13/17
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Kathleen Bergin (claimant) appealed a representative's August 30, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Family Dollar Stores of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2017. The claimant participated personally. The employer participated by Frank Homan, Store Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on August 1, 2017, as a full-time assistant manager/key holder. The claimant received the employer's handbook when she was hired. The handbook prohibits horseplay and inappropriate comments. The employer allows employees to have breaks.

When she was hired the claimant asked about breaks and was told by co-workers and her store manager that key holders do not get breaks. The claimant worked every day for seven to ten hours without food. The store manager took cigarette breaks. The cashiers were allowed breaks.

On August 9, 2017, the claimant's co-worker, Amanda, came to work and started yelling at the claimant for taking her job duties as the store manager watched. Later three people, friends or relatives of Amanda, entered the store and called the claimant names. One followed the claimant around the store and called her "bitch". At least one customer was uncomfortable and did not understand why the manager, who was present, did not stop the situation. The claimant

called her husband for help. Later, the store manager had two of the people leave but the third person he allowed to stay. She continued to follow the claimant around the store. The store manager let her stay because she was related to another store employee. Eventually, the three sat in a car outside the store waiting for the claimant to get off work. Amanda sent the claimant a text saying her "cuz apologies for getting all crazy".

The claimant did not work on August 10, 2017. She saw her physician about the situation at work and was prescribed medication. On August 11, 2017, the claimant returned to work. A number of workers were standing together when the store manager indicated he was going to the bathroom. He jokingly commented that he did not want anyone to be afraid of the customers in the store while he was gone and then laughed. While he was gone the claimant turned in her keys and walked out. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with 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.

Iowa Admin. Code r. 871-24.26(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.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the issue with breaks. She asked about breaks and the store manager told her no breaks. The claimant worked nine days without food. The store manager saw a co-worker yell at the claimant, saw customers abuse the claimant, and then he made fun of her. The store manager failed to keep his employees safe. This is unconscionable behavior. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 30, 2017, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs