

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA WILLARD**  
Claimant

**APPEAL NO: 08A-UI-07684-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP INC**  
Employer

**OC: 07/20/08 R: 03**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Dolgencorp, Inc. (employer), doing business as Dollar General, appealed an unemployment insurance decision dated August 15, 2008, reference 02, which held that Jessica Willard (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2008. The claimant participated in the hearing. The employer participated through Marquis Goodale, District Manager. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**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 as a full-time lead sales associate on August 21, 2007 in Independence, Iowa at store number 2329. She moved to the Waterloo area and requested to transfer to store number 1458 in Evansdale, Iowa but there were no current openings at that store. The claimant agreed to work in the Waterloo area at store number 7136 while the store manager was in training and she began working there on June 13, 2008. She worked for approximately two weeks before she was transferred to store number 4737. The claimant did not want to work in store number 4737 and was told she would again be transferred but no date was given as to when it would happen. She worked two days and quit on June 29, 2008. The claimant told the store manager to call her when she could be transferred to another store. She testified she was given two numbers for the district manager but the numbers were not valid and she admitted she never made any other attempt to talk to the employer about what she wanted. The district manager testified he could have easily accommodated the claimant if she would have only talked to him before quitting.

The claimant filed a claim for unemployment insurance benefits effective July 20, 2008 and has received benefits after the separation from employment.

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

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the store manager of store number 4737 that she was not going to work until she could be transferred. Continuing work was available and it was her choice not to work. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated August 15, 2008, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs