

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J BURNETT
Claimant

APPEAL NO. 13A-UI-02982-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 02/03/13
Claimant: Respondent (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Dolgencorp, filed an appeal from a decision dated March 5, 2013, reference 01. The decision allowed benefits to the claimant, Amanda Burnett. After due notice was issued, a hearing was held by telephone conference call on April 12, 2013. The claimant participated on her own behalf and Brett Liebold. The employer participated by Store Manager Mark Robinson and Sales Associate Leanna Deppe.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Amanda Burnett was employed by Dolgencorp from March 17, 2011 until February 6, 2013 as a full-time assistant manager. She suffered a work-related injury on December 7, 2012, and did not work after that time.

Somehow Ms. Burnett's name appeared on the work schedule for February 2, 3, 4, 5 and 6, 2013, even though she had not been released to return to work without restrictions. Her name was added after the schedule had been posted because her hours were penciled in and everyone else's had been printed off the computer program.

The claimant did not appear for work for the scheduled days and was considered a voluntary quit by being no-call/no-show to work during that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The testimony of the employer and the claimant diverged substantially as to the events in question. The administrative law judge resolves the issue of credibility in favor of the claimant. Her testimony was precise and well documented. The employer's second witness did not support the testimony of the first witness, and many questions as to chronology and conversations were not substantiated.

The record establishes the claimant did not know she was to work those days and was never told by management her name had been penciled in on the schedule at the last minute. She cannot be held responsible for information she did not have. It is questionable that her name was even penciled in until after February 6, 2013. Therefore the employer's allegation she was no-call/no-show to work for three days is unsubstantiated and there has been no credible rebuttal of the claimant's testimony. Disqualification may not be imposed.

DECISION:

The representative's decision of March 5, 2013, reference 01, is affirmed. Amanda Burnett is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css