

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 06A-UI-00386-RT
OC: 11-27-05 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**BETTY HARDING
101 CENTER
PO BOX 483
NORWALK IA 50211-0483**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**DOLLAR GENERAL
SUNSET DR
NORWALK IA 50211**

**DOLGENCORP INC
D/B/A DOLLAR GENERAL
C/O COMPENSATION TAX MANAGEMENT
INC
PO BOX 34150
LOUISVILLE KY 40232-4150**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2-3 – Initial Determination (Previous Adjudication)

STATEMENT OF THE CASE:

The employer, Dolgencorp, Inc., doing business as Dollar General, filed a timely appeal from an unemployment insurance decision dated January 3, 2006, reference 03, allowing unemployment insurance benefits to the claimant, Betty Harding, because a decision allowing unemployment insurance benefits to the claimant had been made on a prior claim and that decision remains in effect. After due notice was issued, a telephone hearing was held on January 26, 2006, with the claimant participating. Lori Sweet, Manager of the employer's store in Norwalk, Iowa, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeal number 06A-UI-00385-RT, for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was separated from the employer on November 21, 2005. An authorized representative of Iowa Workforce Development issued a decision on that separation on December 22, 2005, reference 01, allowing unemployment insurance benefits to the claimant. The employer appealed this decision to the Appeal Section or was treated as appealing this decision to the Appeal Section. This decision was heard in this consolidated hearing. In appeal number 06A-UI-00385-RT, which was consolidated for the purposes of the hearing with this appeal, the administrative law judge concluded that although the employer's appeal was not timely, the employer had demonstrated good cause for a delay in the filing of its appeal and therefore the administrative law judge had jurisdiction to reach the separation issue. The administrative law judge further concluded in that appeal that the claimant was discharged but not for disqualifying misconduct and therefore the claimant was not disqualified to receive unemployment insurance benefits. The proper remedy for the employer if it wishes to pursue this matter is to appeal that decision to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the issue of the claimant's eligibility for unemployment insurance benefits arising out of her separation from the employer herein, Dolgencorp, Inc., doing business as Dollar General, has been previously adjudicated. It has and the claimant is entitled to receive unemployment insurance benefits.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law

judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.6-3 provides:

3. Appeals. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

The administrative law judge concludes that the separation issue set out in this appeal involving a separation from the claimant's employment with the employer herein, Dolgencorp, Inc., doing business as Dollar General, has been previously adjudicated in appeal number 06A-UI-00385-RT which considered a previous decision by a Workforce Development representative dated December 22, 2005, reference 01. That appeal dealt with the claimant's separation from the employer on November 21, 2005. There is no evidence that the claimant has had any other separation from the employer. Accordingly, the administrative law judge concludes that the issues concerning the claimant's entitlement to benefits as a result of her separation from the employer herein, has already been adjudicated and determined by the decision in appeal number 06A-UI-00385-RT. The administrative law judge has no jurisdiction now to redetermine that issue, namely, whether the claimant's separation from employment was a disqualifying event, either because of a discharge for disqualifying misconduct or because the claimant left work voluntarily without good cause attributable to the employer. The administrative law judge further concludes that the decision in that appeal remains in effect and that the claimant is not disqualified to receive unemployment insurance benefits. If the employer wishes to further contest these benefits the proper remedy is to appeal to the Employment Appeal Board the decision in appeal number 06A-UI-00385-RT. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$635.00 since separating from the employer herein on or about November 21, 2005, and filing for such benefits effective November 27, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 3, 2006, reference 03, is affirmed. The claimant, Betty Harding, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because separation issues presented by this appeal have already been previously adjudicated in appeal number 06A-UI-00385-RT, and a decision by an administrative law judge has been issued allowing the claimant unemployment insurance benefits because she was discharged but not for disqualifying misconduct. The remedy for the employer if it wishes to pursue this matter is to appeal that decision to the Employment Appeal Board. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

kkf/kjw