

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA P SCOTT
Claimant

DOLGENCORP LLC
Employer

APPEAL 15A-UI-10546-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 16, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 1, 2015. Claimant participated. Employer participated through Misty Lungren, Store Manager.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant manager beginning in July 2014 through August 17, 2015 when she voluntarily quit.

In July 2015 the claimant asked for permission to transfer to a store in Colorado. She was given permission to transfer to the store where Ms. Lungren would be her manager. She initially was to start on August 14 or 15. She spoke to Ms. Lungren about housing problems she was having and was given until August 17 to start. On August 16 the claimant and her husband went into the store. She spoke to Ms. Lungren and asked for more time off before she started. Ms. Lungren said she really needed the claimant to start the next day at 8:00 a.m. as planned. The claimant agreed to be at work. The claimant did not show up at 8:00 a.m. Ms. Lungren attempted to call her and got no answer. Ms. Lungren then texted the claimant asking her to please call her as soon as she could. The claimant eventually texted back and wrote that she was not at work because the rain had made her go into a ditch but she would be in as soon as she could. The claimant never showed up for work and never contacted the employer again. The employer never told the claimant she was discharged, the claimant simply stopped showing up for work and abandoned her job. The employer was under no obligation to let the claimant push her start date for work back again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(27) and (30) 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:

(27) The claimant left rather than perform the assigned work as instructed.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 agreed to a start date and the employer pushed it back at her request. The employer was under no obligation to push back the claimant's start date due to her housing or transportation problems. The claimant abandoned her job when she simply did not show up for work after saying twice she would be there, and never contacted the employer again. The claimant's leaving was without good cause attributable to the employer. Benefits are denied.

DECISION:

The September 16, 2015, (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs