

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHASTITY A HERRIDGE
Claimant

APPEAL NO: 15A-UI-08478-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC / DOLLAR GENERAL
Employer

OC: 07/05/15

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Dolgencorp, L.L.C. / Dollar General (employer) appealed a representative's July 20, 2015 decision (reference 01) that concluded Chastity A. Herridge (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Mark Crabb appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Benefits subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2014. She worked full time as store manager of the employer's Jefferson, Iowa location. She last worked in the early morning hours of July 3, 2015.

The district manager, Crabb, had been working with the claimant in preparation for a store inventory scheduled for July 7. They had a discussion regarding those preparations on June 30, and again on the afternoon of July 2 around 3:00 p.m. In those discussions Crabb questioned the claimant's choice of how she used her time and advised her to focus her time on issues of greatest priority. The claimant responded that she understood. However, shortly after that discussion, the claimant told the assistant manager and another employee, "I'm done, my keys are on the desk," and left. Upon being informed of this, Crabb called the claimant and attempted conciliation. Upon the conclusion of that conversation the claimant agreed that she would go back to the store. However, she did not go back to the store until 10:00 p.m. She then worked until about 3:00 a.m. At this time she took her keys back.

Crabb and the claimant were scheduled to perform a pre-inventory store walk at 8:00 a.m. on July 3. She did not appear for that walk through and she did not respond to Crabb's attempt to call her. She did not come in for work on July 4 although the store was open, and store managers typically work the holidays, especially just before a scheduled inventory. In a text message to the assistant manager at about 1:00 p.m. she indicated again that "I think after yesterday, I'm done." On the morning of July 5 Crabb sent the claimant asking her for her keys. On the afternoon of July 5 the claimant called Crabb and stated that she was still upset about the conversation they had on the afternoon of July 2, that she wanted to spend time with her family, and that she had thought Crabb was "different." Her husband then brought her keys into the store later that evening.

The claimant established a claim for unemployment insurance benefits effective July 5, 2015. A fact-finding interview was held with a Claims representative on July 17, 2015. The employer, through Crabb, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,052.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. Rule 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. Rule 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's July 20, 2015 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 5, 2015, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$2,052.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs