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

STARLA WAGNER
Claimant

APPEAL NO. 16A-UI-11562-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

OC: 10/02/16
Claimant: Appellant (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit

871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Starla Wagner filed a timely appeal from the October 19, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Wagner had voluntarily quit on August 5, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 9, 2016. Ms. Wagner participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Wagner's voluntary quit was for good cause attributable to the employer.

Whether the separation from part-time employment disqualifies Ms. Wagner for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Starla Wagner was employed by Dollar Tree Stores, Inc., as a part-time cashier until August 5, 2016, when she voluntarily quit the employment. Ms. Wagner had begun the employment in spring 2016 and worked as a part-time cashier at a Dollar Tree store located on First Avenue in Cedar Rapids. Ms. Wagner voluntarily quit the employment to relocate to another area of Cedar Rapids after she and her boyfriend were evicted from their apartment. Ms. Wagner decided she did not want to commute from her new residence in Cedar Rapids to the Dollar Tree store on First Avenue.

Ms. Wagner established a claim for unemployment insurance benefits that was effective October 2, 2016. Dollar Tree Stores, Inc., is a base period employer for purposes of the claim.

REASONING AND CONCLUSIONS OF LAW:

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(2) 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:
>
> (2) The claimant moved to a different locality.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning 10 times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The evidence in the record establishes a voluntary quit from part-time employment that was without good cause attributable to the employer. The quit was based on Ms. Wagner's need to move to a new residence in a different part of Cedar Rapids. Because the quit was without good cause attributable to the employer, the employer's account shall not be charged for benefits. Because the quit was without good cause attributable to a part-time employer, Ms. Wagner is disqualified for benefits that are based on the base period wages from Dollar Tree Stores until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Because Ms. Wagner had base period wages from other employer's, she remains eligible for reduced benefits based on her base period wages from those other employers, provided she meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for redetermination of Ms. Wagner's eligibility for reduced benefits. Upon remand, the Benefits Bureau shall also determine whether Ms. Wagner has met the availability requirement since she filed her claim, in light of her recent re-employment.

DECISION:

The October 19, 2016, reference 01, decision is modified as follows. The claimant voluntary quit the part-time employment on August 5, 2016 without good cause attributable to the

employer. The employer's account shall not be charged for benefits. The claimant is disqualified for benefits *based on the base period wages from Dollar Tree Stores* until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant remains eligible for reduced benefits based on base period wages from other employers, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for redetermination of the claimant eligibility for reduced benefits, based on the her base period employment other than Dollar Tree Stores. Upon remand, the Benefits Bureau shall also determine whether the claimant has met the availability requirement since she filed her claim, in light of her recent re-employment.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs