

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L HENRY
Claimant

APPEAL NO. 08A-UI-09739-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
STORE #1424
Employer

OC: 08/17/08 R: 02
Claimant: Respondent (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the October 13, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 14, 2008. Claimant participated. Store Manager John Muzney represented the employer.

The hearing in this matter was initially set for November 6, 2008. Both parties appeared at that time. The employer provided testimony and the claimant was given an opportunity to cross examine the employer. The claimant started to provide testimony. The claimant then asserted that she was ill and had a fever. Based on the claimant's assertion, the administrative law judge terminated the hearing. Prior to terminating the proceedings on November 6, 2008, the administrative law judge told the parties that the hearing would be rescheduled and would begin anew. The Chief Administrative Law Judge determined that the same administrative law judge should conduct the new hearing. On November 10, 2008, the claimant provided a medical excuse from a nurse practitioner, which excuse indicated that the claimant was indeed suffering from a gastrointestinal flu on November 6, 2008. The administrative law judge conducted a new hearing from start to finish on November 14, 2008.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Henry was employed by Family Dollar as a part-time cashier from January 15, 2008 until August 15, 2008, when she voluntarily quit in response to receiving a reprimand. John Muzney managed the store where Ms. Henry worked. Assistant Managers Rachel Thompson and Kim Fisher each had supervisory authority over Ms. Henry's work. Immediately prior to August 15,

2008, Mr. Muzney had been on vacation for a week. Upon returning to work, Mr. Muzney received written complaints from the two assistant managers and from another cashier about Ms. Henry's conduct while Mr. Muzney was away. While Mr. Muzney had been away, Ms. Henry had contacted the district manager to request a transfer to a different store. Ms. Henry had an ongoing personality conflicts with three of her coworkers. Ms. Henry believed that the employer engaged in preferential treatment of another employer in preparing the work schedule. Based on the complaints from coworkers, Mr. Muzney and his district manager initially decided to discharge Ms. Henry from the employment, but then decided to issue only a final warning instead.

A short while into Ms. Henry's shift on August 15, Mr. Muzney summoned Ms. Henry to a meeting. Mr. Muzney reviewed the written disciplinary action with Ms. Henry. Mr. Muzney showed Ms. Henry the area on the disciplinary action document where the employer had initially indicated that Ms. Henry would be discharged from the employment. Mr. Muzney showed Ms. Henry that he had crossed out that information. Mr. Muzney told Ms. Henry that the employer had decided to issue the final warning instead of discharging Ms. Henry from the employment. Ms. Henry denied engaging in any misconduct while Mr. Muzney was away. Ms. Henry then asserted that nobody wanted her to work at that store and had never wanted her there. Ms. Henry told Mr. Muzney that it would be better if she just left. Ms. Henry left the meeting, collected a stool she used when she was cashiering, and left the workplace. Ms. Henry returned two weeks later for the sole purpose of collecting her final paycheck.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Henry voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in the record indicates that Mr. Muzney made it clear to Ms. Henry during the August 15, 2008 meeting that the employer was not going to discharge her from the employment at that time and that the employer had decided instead to issue a disciplinary warning. The evidence indicates that despite this clear information from the employer, Ms. Henry announced that it would be better if she left the employment. The evidence indicates that Ms. Henry then voluntarily quit the employment. It is noteworthy that Ms. Henry took her property, the stool, with her when she left on August 15, 2008. Ms. Henry's words and conduct indicate a quit. The administrative law judge concludes that Ms. Henry voluntarily quit and was not discharged from the employment.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Where a person voluntarily quits in response to receiving a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

Where a person voluntarily quits in response to a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)

Where a person voluntarily quits in response to an inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6).

The weight of the evidence does not establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. Instead, the evidence indicates that Ms. Henry experienced personality conflicts with several employees, including at least two of her supervisors. The weight of the evidence indicates that Ms. Henry's voluntary quit was prompted in part by these personality conflicts and prompted by the final warning the employer issued on August 15, 2008.

The evidence in the record establishes that Ms. Henry's voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Henry is disqualified for benefits based on wage credits earned from this employment until she 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 shall not be charged for benefits paid to Ms. Henry.

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 ten 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.

This matter will be remanded to the Claims Division for determination of whether the claimant is eligible for reduced benefits based on base period wage credits from other employers.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

The claimant has been deemed ineligible for benefits based on wage credits earned from this employment. Any benefits the claimant has received, and that are based on this employment, would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's October 13, 2008, reference 01, decision is amended as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on this employment until she has worked in a job that has paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter will be remanded to the Claims Division for determination of whether the claimant is eligible for reduced benefits based on base period wage credits from other employers.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css