

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

NIKKI CLARK
1226 – 10TH ST NW
MASON CITY IA 50401

FAMILY DOLLAR STORES OF IOWA INC
STORE #1424
c/o TALX UCM SERVICES INC
PO BOX 282
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00904-DWT
OC 12/21/03 R 02
Claimant: Appellant (2)

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.

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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Nikki Clark (claimant) appealed a representative's January 21, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Family Dollar Stores of Iowa, Inc. (employer) would not be charged because the claimant had voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2004. The claimant participated in the hearing with a witness, Janet Burnett. Larry Sprague, the district manager, and Lulonie Nitchler, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 27, 2002. The claimant worked as a part-time cashier, but was in training to work as an assistant manager when her employment ended. Nitchler was her supervisor.

During the claimant's employment, there were several times she worked "off the clock". For instance when she was learning to do Saturday night books, she worked 30 to 90 minutes off the clock at least two times. Her supervisor knew she worked off the clock and did not report her additional hours to the corporate office. The claimant also reported working off the clock during her 30-minute lunch break. Another time, the claimant worked 2.5 hours without getting paid after Nitchler indicated the store did not have the payroll to pay the claimant these additional hours. The claimant believed the employer had a legal obligation to pay her for all the time she worked, but she did not say anything to Sprague until December 19, 2003. The claimant talked to an assistant manager about her concerns prior to December 19.

On December 19, the claimant called Sprague to let him know she was going to quit because of all the problems in the store. In addition to not being paid for all the time she worked, the claimant quit because Nitchler gave a new employee training the claimant had never received and the claimant was training to work as an assistant manager and employees were leaving because of all the problems at the store. Sprague indicated he would look into her concerns as soon as possible, but could not do so that day.

After the claimant finished her conversation with Sprague, she looked at the schedule as Nitchler told her to do when she got to work. Nitchler scheduled her to work eight hours that day and had only indicated she would be unloading a truck. The claimant quit after she concluded the Nitchler scheduled her this way because the day before the claimant questioned Nitchler about why she trained a new employee how to do a procedure when she had not yet trained the claimant how to do it. The claimant was also upset because she had hurt her back the week before at work and did not usually unload trucks. The claimant concluded Nitchler scheduled her to do this job to retaliate or punish the claimant for questioning her the day before. The claimant quit on December 19 for all these reasons.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit her employment on December 19, 2003. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits with good cause when she leaves employment because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant's testimony is more credible than the store manager's testimony. Even though the manager initially indicated the claimant did not work off the clock, she ultimately agreed she knew the claimant worked at least once off the clock because she was training the claimant how to do books on Saturday night. The manager eventually acknowledged she did not accurately report the claimant's hours for at least one Saturday night. The evidence shows the store manager

did not follow the employer's policy about paying employees for all the time an employee worked. The manager's explanation that she forgot the claimant hurt her back just the week before when she scheduled her to unload a truck is not believable. The facts indicate the manager wanted to make sure the claimant saw the schedule and what she had been assigned to do as soon as the claimant reported to work on December 19, 2003. Also, when Sprague investigated the claimant's concerns, he was unable to talk to employees who had worked for a while for the employer because they had all left. This is an indication there were problems in the store.

Based on the above, the claimant is more credible than the store manager. This means that on more than occasion the claimant worked off the clock. At least some of these times the store manager knew the claimant worked off the clock and did nothing about it. An employee is legally entitled to receive wages for all the hours worked. Since the claimant was not paid for all the hours she worked, she quit her employment in part for reasons that qualify her to receive unemployment insurance benefits. As of December 21, 2003 the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 21, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of December 21, 2003, she is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf