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

LULONIE K NITCHER
PO BOX 713
MANLY IA 50456

FAMILY DOLLAR STORES OF IOWA INC
STORE # 1424
C/O TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07918-RT
OC: 06-20-04 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 is 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 Quitting

STATEMENT OF THE CASE:

The claimant, Lulonie K. Nitcher, filed a timely appeal from an unemployment insurance decision dated July 14, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 12, 2004, with the claimant participating. Diane Stangler testified for the claimant. Joe Lynch, Joey Infante-Campbell, and Roger Bissette, were available to testify for the claimant but not called because their testimony would have been repetitive and unnecessary. The employer, Family Dollar Stores of Iowa, Inc., participated by written statement of District Manager Larry Sprague. Department Exhibit 1, which was Mr. Sprague's statement, and Claimant's Exhibit A were admitted into evidence.

The administrative law judge attempted to call the employer's witness, Larry Sprague, at the telephone number he had previously provided to the Appeals Section at 2:00 p.m. The

administrative law judge reached his wife, who indicated that Mr. Sprague was in the hospital and would not be able to participate in the hearing. She provided a telephone number for the employer's corporate offices. The administrative law judge called that number and received a lengthy voice mail menu but none of the selections were appropriate. At the end of the menu, a receptionist came on. The administrative law judge explained that he was calling about an unemployment insurance hearing and the receptionist transferred the administrative law judge to a particular number that rang and then he received a voice mail for another employee. The administrative law judge then hung up. The employer's representative, TALX UC eXpress, had faxed to the Appeals Section a statement by Mr. Sprague with handwritten comments on the transmittal sheet, indicating that in case Mr. Sprague was in the hospital, he wished to submit his statement attached in lieu of his appearance. A copy of that statement was sent to the claimant on August 3, 2004, and received by her. That statement was admitted into evidence as Department Exhibit 1.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit 1 and Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time store manager of store number 4844 in Mason City, Iowa, from August 2001 until she voluntarily quit on June 18, 2004. The claimant's father had been unexpectedly taken to the hospital on May 26, 2004 with a massive heart attack. He died on May 28, 2004. The claimant called the district manager and her supervisor, Larry Sprague, on May 26, 2004, to inform him that she would not be at work because of her father's hospitalization. Mr. Sprague told the claimant that she had to be at work because she was the store manager. The claimant refused. She called Mr. Sprague's supervisor, Dave Easton, and left a message with his receptionist. The receptionist called back and told the claimant that her job was secure and that she should stay with her father and when she was ready to return to work, to do so. The claimant returned to work on June 6, 2004 and worked through June 18, 2004, when she voluntary quit. This is shown by the payment stubs at Claimant's Exhibit A, indicating that the claimant took no vacation pay during that period.

On June 18, 2004, Mr. Sprague came to the claimant's store to rate the store. He was upset. He insulted the claimant and yelled at the claimant in the presence of customers, telling her, among other things, that she did not know how to run the store, and making suggestions about how the store should be run in front of customers. This continued for approximately 30 to 45 minutes. The claimant and Mr. Sprague then went to her office, but Mr. Sprague left the door open and began to yell at the claimant about her father and that the claimant had no right to take time off for her father. Mr. Sprague, in that discussion, stated that he did not give a "shit" about her dad or her mom or her family. The claimant could take no more of this and quit. The claimant did not use profanity. The claimant had never expressed any concerns before about Mr. Sprague because until that time she had had no problems with him. The claimant did not threaten or announce an intention to quit prior to her quit.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not .

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.

871 IAC 24.26(2), (3), (4) provide:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (2) The claimant left due to unsafe working conditions.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The claimant credibly testified, and the administrative law judge concludes, that she quit on June 18, 2004. The issue then becomes whether the claimant left her employment with good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant credibly testified that her father had to go unexpectedly to the hospital on May 26, 2004 because of a massive heart attack and that he then died on May 28, 2004. The claimant testified that when she informed Mr. Sprague on May 26, 2004 that she would not be at work he demanded that the claimant be at work on that day because she was a manager. The claimant refused and called a superior of Mr. Sprague, Dave Easton. Mr. Easton left a message for the claimant that her job was secure and that she could stay with her father and when she was ready to return to work, it would be acceptable. The claimant was off work from May 26 to June 5, 2004. The claimant worked from June 6 through June 18, 2004, when she had the disagreement with Mr. Sprague, resulting in her quit.

The claimant credibly testified that on June 18, 2004, Mr. Sprague yelled at her and insulted her about running the store and made suggestions for 30 to 45 minutes in the front of customers. The claimant then testified that she and Mr. Sprague went to her office but Mr. Sprague left the door open and told the claimant that she should not have had the right to take time off because of her father, and further said that he did not give a “shit” about her father, her mother, or her family. The claimant then quit. The statement of Mr. Sprague, in lieu of participation, at Department Exhibit 1, is contrary in many respects. The administrative law judge is constrained to conclude that the claimant's version is more credible. Mr. Sprague stated in his statement that the claimant took seven to ten additional days of vacation pay on top of her bereavement pay and then he gave her an additional seven to ten days to get back in the swing of things before he rated the store again. This is belied by Claimant's Exhibit A. Mr. Sprague stated that when he returned to the store on June 24, 2004 he still rated the store as a zero and then was informed that the claimant was going to take the weekend off. However, the claimant was not working on June 24, 2004, having voluntarily quit on June 18, 2004, and this is confirmed by the employer’s letter of protest filed by its representative, TALX UC eXpress. Mr. Sprague does not

address the discussions between he and the claimant on June 18, 2004. Finally, the claimant's witness, Diane Stangler, confirms the claimant's testimony. Accordingly, the administrative law judge concludes that the claimant's testimony and her recitation of the events is accurate and credible. The administrative law judge further concludes that the acts and behavior of Mr. Sprague on June 18, 2004 made the claimant's working conditions intolerable and detrimental and perhaps unsafe and unlawful. The claimant was just in the process of getting over the death of her father and had experienced the death of her mother approximately one year before, and it was inappropriate of Mr. Sprague to attack the claimant at that time for being absent because of her father's illness and death. Further, the use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as disqualifying misconduct, even in the case of isolated incidents or situations in which the target of abusive name calling is not present. Myers v. Employment Appeal Board, 462 N.W.2d 734, (Iowa App. 1990). The evidence establishes that Mr. Sprague used profanity at the claimant involving the word "shit," which use was confrontational and disrespectful and the target, the claimant, was present. If such language can be disqualifying misconduct, the administrative law judge concludes that such language can be good cause attributable to the employer for a quit.

It is true that the claimant did not express any concerns to the employer about her working conditions, nor did she ever indicate or announce an intention to quit prior to her quit. The administrative law judge concludes that in this case it was not necessary for the claimant to do so. The claimant had not had any difficulties with Mr. Sprague until he refused to let her take off on May 26, 2004, when the claimant consulted the superior of Mr. Sprague and got such permission. The claimant was then off work and had no reason to express any concerns or threaten to quit until the incident on June 18, 2004. That incident was so severe that the claimant had no opportunity to express concerns or threaten to quit prior to her quit. Accordingly, the administrative law judge concludes that the claimant's failure to express concerns about these matters and/or threaten to quit does not diminish or prohibit the claimant's quit with good cause attributable to the employer or her receipt of unemployment insurance benefits.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision dated July 14, 2004, reference 01, is reversed. The claimant, Lulonie K. Nitcher, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she left her employment voluntarily with good cause attributable to the employer.

b/b