

**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**

**RENEE D SPRINGER
516 GREENWOOD AVE
NASHUA IA 50658**

**DOLGENCORP INC
D/B/A DOLLAR GENERAL
C/o COMPENSATION TAX MANAGEMENT
PO BOX 34150
LOUISVILLE KY 40232-4150**

**Appeal Number: 06A-UI-01685-RT
OC: 01/01/06 R: 02
Claimant: Appellant (4)**

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
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Renee D. Springer, filed a timely appeal from an unemployment insurance decision dated February 6, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 28, 2006, with the claimant participating. Shawn McGarvey, District Manager, participated in the hearing for the employer, Dolgencorp, Inc., doing business as Dollar General. This appeal was consolidated with Appeal Number 06A-UI-01686-RT for the purposes of the hearing with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently as a store manager, from October 1, 1998, until she was separated from her employment on February 13, 2006. In June of 2005 the claimant was injured in a car accident which was unrelated to her employment. Among other injuries, the claimant suffered a hip injury. At the time of the car accident, the claimant was commuting to work but was not at work or working for the employer at the time. As a result of the injuries, the claimant was on FMLA leave from August 29, 2005, to October 24, 2005. The claimant was then released by her physician to return to work without restrictions. The claimant then worked until December 30, 2005, when restrictions were placed on her on December 27, 2005, of no lifting of over ten pounds and a requirement that she sit five to ten minutes every hour. The employer could not meet these restrictions, and the claimant went back on FMLA leave December 30, 2005, which was exhausted on January 29, 2006. The claimant still had the same restrictions which prevented her from working. When the claimant exhausted her FMLA leave, the employer gave the claimant an additional two weeks of unpaid leave, which ended February 13, 2006. The claimant was still not able to return to work, and the employer treated the employment as a voluntary quit.

When the claimant was first hired she was informed that the employer had a 40-pound weight lifting requirement for all employees and frequent use of stepladders. The claimant was aware of these requirements and even signed a document acknowledging such requirements. As a store manager, the claimant must assist in unloading trucks and stocking shelves and cannot regulate the timing of any sitting. The claimant could not meet those requirements.

The claimant has placed no other physical or training restrictions on her ability to work other than the ten-pound lifting restriction and the requirement that she sit five to ten minutes every hour, which are still restrictions on the claimant's ability to work. The claimant has placed no restrictions on the times or days or locations where she could or could not work. The claimant is earnestly and actively seeking work by making two in-person job contacts each week. The claimant is applying for positions as a cashier which will permit her to sit occasionally and not lift and also positions as a secretary or office worker.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was, as of February 13, 2006.
2. Whether the claimant is ineligible to seek unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to seek unemployment insurance benefits for these reasons.

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(6)a provides:

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant quit effective February 13, 2006, when she was not able to return to work after she had exhausted her FMLA leave and a further two-week leave allowed by the employer after the FMLA leave had been exhausted. The claimant maintains that she is not permanently separated but is on a medical leave but concedes that she is not able to meet the employer's requirements for the job and that all of her other leaves have been exhausted. On the evidence here, the administrative law judge is constrained to conclude that the claimant left her employment voluntarily effective February 13, 2006. When the claimant was first hired she was fully aware and informed that the employer had a requirement that all employees lift 40 pounds and would have to frequently use a stepladder. The claimant even signed an acknowledgement of such requirements. The claimant is not able to meet those requirements. Further, as a store manager the claimant must assist in unloading trucks and stocking shelves and it is difficult to regulate the timing of her sitting. The claimant testified that she believed she could have continued to work because others could unload the truck but conceded that when the truck was unloaded, she had to stand by the truck and see that there is no theft and that the items from the truck are properly unloaded. This alone would not meet the claimant's restriction of sitting five to ten minutes every hour. The claimant is unable to meet the employer's requirements because of an automobile accident unrelated to her employment. Although the claimant did not actually inform the employer that she was voluntarily quitting, the administrative law judge is constrained to conclude here that the claimant in effect quit voluntarily on February 13, 2006, when she was unable to return to work after exhausting all of the potential leaves available to her. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on February 13, 2006. The issue then becomes whether the claimant left her employment without 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 failed to meet 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 only reason the claimant left her employment was her automobile injuries, which were unrelated to her employment. These injuries prohibited the claimant from meeting the job requirements of the employer. There is no evidence that the claimant has recovered from her injuries and has been released to return to work as certified by a licensed and practicing physician and that the claimant has returned to work and no suitable comparable work was available. Accordingly, the administrative law judge is constrained to conclude that the claimant

left her employment voluntarily effective February 13, 2006, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant beginning with benefit week ending February 18, 2006, and continuing until, or unless, she requalifies for such benefits.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is, and was, at relevant times, able, available, and earnestly and actively seeking work. The claimant testified that she has placed no physical restrictions or training restrictions on her ability to work other than a lifting restriction of ten-pounds and that she must sit five to ten minutes every hour. In order to be able to work, the claimant must be physically and mentally able to work in some gainful employment, and not necessarily in her usual customary occupation. Although the claimant is certainly not able to work in her usual customary occupation, the administrative law judge is constrained to conclude that the claimant's restrictions do not unreasonably impede her ability to work at gainful employment. The claimant testified that she is seeking work as a cashier or a secretary which should meet her restrictions. The claimant further testified that she has placed no time or day or location restrictions on her availability to work. The claimant also testified that she is making two in-person job contacts each week and is keeping track of such contacts. The administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and, as a consequence, she is not ineligible to receive unemployment insurance benefits for those reasons. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of February 6, 2006, reference 01, is modified. The claimant, Renee D. Springer, is not entitled to receive unemployment insurance benefits beginning February 13, 2006, or benefit week ending February 18, 2006, until, or unless, she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer on February 13, 2006. The claimant is able, available, and earnestly and actively seeking work.

cs/kjw