

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**SHAWN A SHILL**  
Claimant

**SCHUKEI CHEVROLET INC**  
Employer

**APPEAL 15A-UI-04715-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/15**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 20, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2015. The claimant participated. The employer participated through Paul Harbacheck.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a salesman and was separated from employment on March 26, 2015; when he was discharged after offering his resignation.

The claimant resigned after an ongoing dispute regarding his wages was unresolved. The claimant was previously paid a set wage of \$346 per week plus at the end of the month; he would receive additional incentive pay based on the amount of cars sold. The claimant went on a leave of absence due to a worker's compensation related injury and when he returned in late January or early February, his pay scale had changed. The employer, through Tim Rosen, told him in the presence of his manager, Paul Harbacheck that he would now be paid \$150 for each car sold each week to offset his worker's compensation pay. Mr. Rosen changed his mind and did not pay the amount agreed upon, and the claimant tried to meet with payroll and his management at least three times before he resigned. The claimant did not receive payment weekly for the cars he had sold. On his final week of work, he sold three cars. When he resigned, he had offered to work through April 15, 2015 but was discharged immediately. The owner of the employer sent him a text message saying the claimant's departure was the best day of his life.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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. 871-24.26(3) and (4) 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:

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

The employer changed the claimant's wage agreement from a set wage each week to being based upon the amount of vehicles sold upon his return from a leave of absence. The claimant was the only individual with this pay structure. The employer then did not uphold the agreement and through Mr. Rosen revoked the arrangement. The claimant repeatedly tried to resolve the issue because his bills were suffering due to the non-payments and delays. The employer's failure to pay full wages as due created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The April 20, 2015 (reference 01) unemployment insurance decision is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

---

Jennifer L. Coe  
Administrative Law Judge

---

Decision Dated and Mailed

jlc/can