

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY MORAN
Claimant

**UNITED STATES CELLULAR
CORPORATION**
Employer

APPEAL 22A-UI-01136-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/14/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Randy Moran, filed an appeal from the December 9, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2022. The claimant participated and testified. The employer did not participate. No exhibits were received into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the 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 retail sales consultant from August 13, 2017, until he was separated from employment on August 7, 2021, when he quit. The claimant reported directly to Manager David Coble.

The claimant was hired with the expectation that he would be working 40 hours per week. He was scheduled to work from 9:30 a.m. to 6:30 p.m. This amount of time could be different if he had to cover for other employees. This expectation changed after the claimant was in the role because the employer had a policy stating employees could not turn customers away, even if the store hours said it was closed for the night. Furthermore, the store was understaffed which made it more likely than not that the claimant would not be able to take any breaks or lunch. Supervisors would not relieve the claimant, so that he could use the bathroom. The claimant began experiencing profound anxiety attacks that caused him to vomit and have severe headaches.

In December 2020 of January 2021, the claimant went to the doctor because of the anxiety he had been experiencing. The claimant's physician filled out intermittent FMLA paperwork, so the claimant could take leave when his anxiety flared up.

In May 2021, the claimant's wife was expecting to give birth to their baby. The claimant attempted to call in sick when she needed to attend unanticipated medical appointments, but the claimant was not approved to join her. One time in particular, the claimant's wife fell and was experiencing severe stomach pain. The claimant could not help her. This led the claimant to use vacation time for paternity leave at the end of June to July 2021. While the claimant was off on vacation, the claimant was not paid on time. This led the claimant to be late on all of his bills including rent, utilities, and car payments. The claimant did not receive his first check of more than \$1000, until two weeks after he was supposed to. He did not receive his commission check until after he had resigned.

In mid-July 2021, the claimant sent his two week notice via email to District Manager Josh (last name unknown), Mr. Coble and Supervisor Brandon Pokorney.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(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:

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

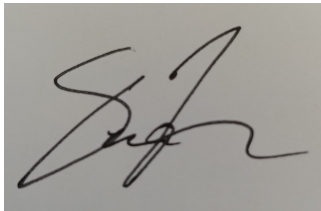
Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment 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 claimant was delayed in getting paid towards the end of his term of employment. This led to disruption in paying his bills. In addition, the claimant being asked to work through days without a break more often than not shows he quit due to intolerable working conditions. Benefits are granted, provided he is otherwise eligible.

DECISION:

The December 9, 2021, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is displayed on a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 28, 2022
Decision Dated and Mailed

smn/kmj