

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TED OBRIEN**  
Claimant

**US CENSUS BUREAU / EQUIFAX**  
Employer

**APPEAL 21A-UI-03721-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (2R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 12, 2021, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 30, 2021. Claimant participated and testified. Employer did not participate.

**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, Ted O'Brien, was employed full-time with the employer, the United States Census Bureau, as an operations supervisor from February 12, 2020, until July 25, 2020, when he accepted a field manager role. Prior to being promoted, the claimant's immediate supervisor was Elane Sanders.

As part of the US Census Bureau's process, employees are required to resign from their previous positions when they receive a new position.

On July 17, 2020, the claimant was offered the position of field manager.

On July 22, 2020, the claimant accepted the field manager position, which was considered as his resignation from his previous position by the employer.

On July 25, 2020, the claimant began working as a field manager. He continued to work for the employer until December 5, 2020, when he was separated from employment.

## REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not separate from employment on July 25, 2020, but merely accepted a new position with the same employer. Benefits are granted.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

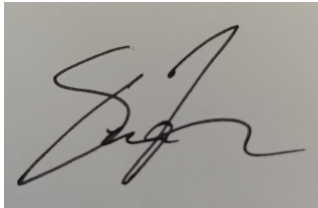
While the employer may have considered the claimant's acceptance of a new role a form of resignation, it cannot be considered one as a matter of law. The claimant's sole reason for leaving the position was to take a promotion. In that context, it cannot logically be construed as demonstrating an intention to sever his employment relationship with the US Census. Benefits are granted.

**DECISION:**

The representative's January 12, 2021, (reference 02) is reversed. The claimant did not voluntarily resign. He continued to work for the employer until December 5, 2020 in another role. Benefits are granted provided the claimant is otherwise eligible.

**REMAND:**

The administrative law judge remands the determination of the claimant's separation on November 5, 2020 for an evaluation by the Benefits Bureau.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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March 31, 2021  
Decision Dated and Mailed

smn/kmj