

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AJAY GARG
Claimant

APPEAL NO: 10A-UI-12613-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CELLCO PARTNERSHIP
Employer

OC: 08-08-10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 2, 2010, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 26, 2010. The claimant participated in the hearing. Chris Andersen, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 as a full-time assistant retail store manager for Verizon Wireless from July 23, 2007 to August 7, 2010. The claimant worked as a retail consultant at the employer's Ottumwa store until it closed September 21, 2010. He had the option of being laid off and taking a severance package or applying for another position with the company and the claimant chose to apply for another position. After submitting several applications he was offered and accepted a promotion to a position as assistant retail store manager in Cedar Rapids which he was aware was a commute of approximately 125 miles one way. He received a raise from a base salary of \$22,959.00 to a base salary of \$32,700.00 plus commission and also received a raise in pay in March 2010 so he was earning \$33,665.00 in salary alone but his commission numbers were about the same as when he was in Ottumwa. He submitted his two week resignation notice July 26, 2010, effective August 7, 2010, because the commuting distance was too great. The claimant asked for a flexible schedule where he could work longer shifts and less days but the employer denied his request because it does not allow management to work reduced schedules. He thought the Cedar Rapids position was temporary but the employer requires an employee to spend one year in a position before he can move to another position unless no one else in the company with one year in their previous position with the employer applies for the new position. The claimant was never told the Cedar Rapids job was temporary and that he could move to another position shortly but he assumed he would have that option. He voluntarily quit six weeks before he could have transferred because he incorrectly assumed

he could not transfer at that time because he had a verbal warning for attendance. The employer allows employees with verbal warnings for attendance during the previous 12 months to transfer but not those with written attendance warnings whose attendance is considered unacceptable.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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.

871 IAC 24.25(30) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant left his job with the employer because the commuting distance was approximately 125 miles one way so he was spending two to two and one-half hours per day on the road. Obviously the drive involved a great distance and required a great deal of time. The claimant, however, knew the commuting distance when he accepted the position in Cedar Rapids and although he may have thought he would be able to transfer from that position after a short period of time he did not confirm that as a fact with anyone in a position of authority and his assumption proved to be incorrect. Even if he had been allowed to transfer the only other Iowa locations were in Ames and West Des Moines which were each nearly as far away from Ottumwa as Cedar Rapids. Consequently, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer as defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The September 2, 2010, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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