

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R TERRANOVA
Claimant

APPEAL NO. 07A-UI-07734-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/08/07 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on August 28, 2007. Claimant participated. Employer participated through Matt Stuva and Mike Dyer. Kirsten Janke and Phil Smith observed.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time technical service specialist from February 1, 2006 until July 5, 2007 when he quit. He intended to resign as of July 19, 2007 but was discharged immediately.

When hired Stuva and Dyer told him he would temporarily be working Saturdays but there was no mention of working Saturdays in the offer letter. He worked through May 27, 2006, Monday through Friday, 8:00 a.m. to 4:30 p.m., then switched to work Monday and Wednesday through Saturday on a temporary basis (at least six months). After others were offered shift changes, claimant started asking Stuva in October or November 2006 to work Monday through Friday again. Stuva gave non-specific responses and only indicated there was nothing available in the immediate future. Claimant continued to ask him once or twice per month thereafter with same response. When he was moved to Saturdays, he was not told how difficult it would be to take off Saturdays as a vacation day or that it would have been difficult to trade shifts, especially since he was only trained on one business group since he was hired and was not given names of coworkers eligible to work for him. By the time Stuva officially put a shift change request in for claimant in May 2007, there was a hiring freeze until the end of the year and, as a result, there would be no shift change for the “foreseeable future.” Claimant then told Stuva that he would not be able to work Saturdays in the summer because of his child custody situation that arose in April 2007, well after he thought the Saturday shifts would have ended. He asked, in

the alternative, if since he worked remotely from home, whether he could have his children present in his home since other Wells Fargo employees (mortgage brokers) were allowed to do so. Stuva denied permission and told him if he did not work Saturdays, he would receive an attendance occurrence for each instance that would eventually lead to his termination from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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.

871 IAC 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 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 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 IAC 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).

The employer's misrepresentation of the indefinite period of time claimant would be expected to work Saturdays without any apparent reasonable expectation of a shift change; the rare, if any, opportunity to find a replacement even for one Saturday shift; and the threat of disciplinary action of missing a Saturday shift after denial of a reasonable request for vacation, created an intolerable work environment which constitutes a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The August 3, 2007, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css