

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**COLLEEN C REED  
3023 CLEVELAND ST  
CLINTON IA 52732-1639**

**US BANK NATIONAL ASSOCIATION  
C/o JON-JAY ASSOCIATES INC  
PO BOX 182523  
COLUMBUS OH 43218-2523**

**Appeal Number: 06A-UI-02731-JTT  
OC: 02/05/06 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
871 IAC 24.26(4) – Intolerable or Detrimental Working Conditions

STATEMENT OF THE CASE:

US Bank National Association filed a timely appeal from the February 24, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 7, 2006. Claimant Colleen Reed participated. Human Resources Director Diane Kupferschmidt represented the employer and presented additional testimony from Sales and Service Manager Kisha Gomez and Branch Manager Tyla Kelly. Exhibits A through J were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Colleen Reed was employed by US Bank as a full-time teller coordinator from September 19, 2005 until

February 5, 2006, when she quit. Ms. Reed had previously worked for US Bank as a teller during the period of February 2003 through October 2004 and had left the employment on good terms.

Ms. Reed quit her most recent period of employment as a result of conflict with her immediate supervisor, Sales and Service Manager Kisha Gomez. Ms. Gomez had commenced her employment with US Bank in May 2005. The conflict between Ms. Gomez and Ms. Reed arose in November 2005. Ms. Reed had not been given a job description regarding her duties as teller coordinator. Ms. Gomez and Ms. Reed entered into a pattern whereby Ms. Gomez would provide Ms. Reed with insufficient direction to perform specific duties and then fault Ms. Reed for failing to meet performance expectations.

The conflict between Ms. Gomez and Ms. Reed ignited on November 16, when Ms. Reed's three-month-old son became ill and Ms. Reed had to miss work to care for her son. On the day in question, Ms. Reed received a telephone call from her babysitter regarding the baby being ill. Ms. Reed determined that she needed to take the baby to the doctor and advised Ms. Gomez she needed to leave work for that purpose. Ms. Gomez balked at the request to leave. The two women then debated whether Ms. Reed's children or her work should be her first concern. When Ms. Reed insisted that her children had to be her first concern and that she had to take her child to the doctor, Ms. Gomez advised Ms. Reed that perhaps the employer needed to "rethink" her position. This interaction permanently set the tone of the relationship between Ms. Gomez and Ms. Reed.

On November 18, Ms. Reed complained to Ms. Gomez's supervisor, Branch Manager Tyla Kelly, about Ms. Gomez's handling of the request to leave work to care for her son. The three women met on November 21. The meeting did little to resolve the conflict between Ms. Gomez and Ms. Reed. Ms. Gomez asserted that Ms. Reed was not appropriately performing her job responsibilities. Ms. Reed asked for specifics and Ms. Gomez provided as an example a duty that was actually assigned to another bank employee. Ms. Reed asked for a job description. Ms. Kelly indicated that there was no job description and that Ms. Reed's duties were those assigned by Ms. Gomez and/or Ms. Kelly.

On November 22, Ms. Reed was working at the bank when District Manager Amy Breitfelder stopped in. Ms. Gomez was away from the bank at the time. Ms. Breitfelder inquired about Ms. Gomez's sales activities and Ms. Reed gave a positive report. Later that day, Ms. Gomez came to the bank and accused Ms. Reed of giving a negative report to Ms. Breitfelder.

On November 29, Ms. Reed and Ms. Gomez met for Ms. Reed's 90-day review. At that time, Ms. Gomez asserted that Ms. Reed's performance was not where it needed to be and provided conflicting feedback regarding Ms. Reed's customer service skills. In response to the 90-day review, Ms. Reed complained to Human Resources Representative Diane Kupferschmidt. Ms. Reed also contacted the employer's "code of conduct" hotline to report that she was being treated unfairly by Ms. Gomez.

Soon thereafter, Ms. Kelly instituted weekly "coaching sessions" between herself, Ms. Gomez and Ms. Reed. Ms. Kelly relied primarily on Ms. Gomez for her information regarding Ms. Reed's work performance. At the coaching sessions, Ms. Reed wanted to focus on the interpersonal relationship with Ms. Gomez, whereas Ms. Gomez and Ms. Kelly wanted to address Ms. Gomez's assertions about Ms. Reed's alleged poor work performance. Little was accomplished during the "coaching sessions."

On December 9, Ms. Gomez was working at another branch and telephoned Ms. Reed to ask whether Ms. Reed had reviewed the employer's weekly newsletter with the tellers. Ms. Gomez did not clearly indicate which topic in the newsletter she was referring to and then faulted Ms. Reed for not understanding her inquiry. Soon thereafter, Ms. Gomez called back and took Ms. Reed to task for using "post-it notes" as a means of communicating with a teller. Ms. Gomez had left a "post-it note" to draw a teller's attention to the need to sign a daily teller drawer balance sheet. Ms. Gomez asserted that Ms. Reed did not effectively communicate with the tellers and had created tension between herself and the teller in question by using the "post-it note." Ms. Reed subsequently spoke with the teller and learned there was, in fact, no tension between the two. Ms. Reed responded by contacting Ms. Kelly to request a meeting. A few days later, the three women went to breakfast to discuss the conflict between Ms. Gomez and Ms. Reed. The meeting ended with all involved believing that differences had been resolved. During the holiday season, the relationship between Ms. Gomez and Ms. Reed improved.

During the second week in January 2006, Ms. Reed, Ms. Gomez and Ms. Kelly met for their first coaching session in weeks. Ms. Gomez asserted that Ms. Reed was not effectively communicating with the tellers regarding the employer's weekly newsletter. Ms. Gomez had again provided incomplete instructions and then faulted Ms. Reed for not meeting performance expectations. Ms. Gomez asserted that Ms. Reed was not properly distributing work schedules. However, Ms. Reed had provided the work schedules to Ms. Gomez to review and Ms. Gomez had assured her that the schedules had been properly distributed. Little was accomplished during this meeting.

On January 25, Ms. Gomez met with Ms. Reed for a coaching session. During this coaching session, Ms. Gomez took Ms. Reed to task for refusing to purchase clothing with the company logo on it to wear to work and for refusing in front of the tellers. Ms. Reed could not afford to purchase the clothing and thought Ms. Gomez was unfair for insisting in front of the tellers that she purchase the clothing. During this coaching session, Ms. Gomez indicated to Ms. Reed that it was Ms. Reed's responsibility to accept criticism and responsibility regardless of whether she was at fault. Ms. Reed indicated that she did not agree. After this coaching session, one or more tellers approached Ms. Reed to tell her that she was not the first person to be treated unfairly by Ms. Gomez and that Ms. Gomez had forced Ms. Reed's predecessor out of the branch. The former teller coordinator had in fact complained about Ms. Gomez and had in fact subsequently transferred to another branch.

On January 31, Ms. Reed's infant son became ill and Ms. Reed again had to miss work. Ms. Reed's babysitter contacted Ms. Reed at work. Ms. Reed determined she needed to leave work to care for her child. Ms. Reed made a doctor's appointment for the next morning. Ms. Reed left a message for Ms. Gomez, indicating that she would need to be late for work the next day. On February 1, the doctor's appointment regarding Ms. Reed's baby took significantly longer than she expected and concluded with the doctor indicating that the baby had a contagious respiratory illness and would need to stay home the next few days. Ms. Reed left a message for Ms. Gomez regarding her inability to come into work that day or the next.

On Thursday, February 2, Ms. Gomez contacted Ms. Reed and advised Ms. Reed that since she would be out for two days, she would be scheduled to work the upcoming Saturday. Ms. Reed indicated that she would need to secure childcare before she could commit to working and Ms. Gomez indicated her displeasure with the response. That evening, Ms. Reed attempted to contact Ms. Gomez to let her know that the baby's condition had worsened and that she would not be able to appear for work on Friday, February 3. However, Ms. Gomez had

turned her cell phone off and did not listen to the message until the following morning. Ms. Reed had contacted another teller to arrange proper coverage for the bank. That teller also attempted to get a hold of Ms. Gomez, but was unsuccessful. The next morning, Ms. Gomez was upset when Ms. Reed did not appear for work. Ms. Gomez contacted Ms. Reed and abruptly advised that she had taken care of the Saturday shift and no longer needed Ms. Reed to work that day.

Ms. Reed reported for her regular shift on Monday, February 6. When Ms. Reed arrived for work, she noticed Ms. Gomez had changed the color of her hair and complimented her. Ms. Gomez rolled her eyes. Thereafter, Ms. Reed was attempting to help a customer at her teller window, when Ms. Gomez positioned her body between Ms. Reed and the computer Ms. Reed needed to use to assist the customer. Ms. Gomez then similarly violated Ms. Reed's personal space two more times. At this point, Ms. Reed concluded she had endured Ms. Gomez's behavior as much as she could tolerate and had taken all possible steps to address the situation with the employer with no significant change. Ms. Reed delivered her keys to Ms. Gomez and left. Ms. Reed then contacted Ms. Kupferschmidt to advise that she had quit due to Ms. Gomez.

Prior to Ms. Reed's quit, Ms. Kelly had recognized that the situation was out of control. Ms. Kelly had made arrangements to meet with Ms. Gomez on a regular basis to review her communication with Ms. Reed and Ms. Reed's performance. However, Ms. Kelly was still dependent upon Ms. Gomez for information regarding Ms. Reed's work performance. Ms. Kelly had also contacted her supervisor, District Manager Ann Breitfelder, and the two intended to meet with Ms. Reed on February 7 to discuss the work situation. Ms. Kelly had not informed Ms. Reed of the pending visit.

Prior to Ms. Reed's quit, Ms. Reed had contacted multiple outside agencies and requested guidance in how to resolve the problems with her working conditions.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Reed's voluntary quit was for good cause attributable to the employer. It does.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person

would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The preponderance of the evidence in the record establishes working conditions that a reasonable person would have found intolerable and that would have prompted a reasonable person to quit the employment. The evidence indicates that Ms. Gomez ineffectively communicated her expectations of Ms. Reed and then disciplined Ms. Reed for not meeting those expectations. Ms. Gomez undermined Ms. Reed's ability to adequately perform her duties and occasionally resorted to mentally and/or physically harassing behavior. The evidence indicates that Ms. Gomez unreasonably continued to attempt to force Ms. Reed to choose between providing appropriate care for her child and committing to an unreasonable degree of loyalty to the employer. The employer acknowledged a problem, but took insufficient steps to address it, despite being aware that another employee had also experienced problems with Ms. Gomez.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Reed's quit was for good cause attributable to the employer. Accordingly, Ms. Reed is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Reed.

DECISION:

The Agency representative's decision dated February 24, 2006, reference 01, is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf