

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA BANNING

Claimant

APPEAL NO. 17A-UI-05190-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 04/23/17

Claimant: Appellant (1)

Iowa Code § 96.5 1 – Voluntary Leave

STATEMENT OF THE CASE:

The claimant, filed a timely appeal from a representative's decision dated May 9, 2017 reference 01, was denied unemployment insurance benefits finding that the claimant quit work March 23, 2017 after being reprimanded by the employer. After due notice was provided, a telephone hearing was held on June 2, 2017. Claimant participated. The employer participated by Mr. Craig Cree, Hearing Representative and Witness Michelle Kerschner, Administrator. Claimant's Exhibit A was admitted in the hearing record.

ISSUE:

Whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Gina Banning was employed by Care Initiatives from October 2007 until March 23, 2017 when she resigned her position effective that day. Ms. Banning held the position of MDS Coordinator and was paid by the hour; she was considered a full-time employee. Her immediate supervisor was Natalie Trinkle, Director of Nursing.

On March 22, 2017, Ms. Banning was presented a performance improvement plan by Ms. Trinkle, Director of Nursing and Ms. Kerschner, the facilities Administrator. The performance improvement plan listed five areas of the claimant's work that the employer believed needed improvement. Although the claimant was already performing the majority of the duties listed in the five areas, management concluded that the claimant's performance needed to be improved because of deficiencies that had been taking place in the claimant's performance during the recent months of her employment.

The employer believed that Ms. Banning had been aware of some of the issues because she had been involved in an effort to correct errors and complete late reports during recent months. Ms. Banning would not have been required to perform these tasks if the care plans, resident charts had been completed and guidelines had been followed by Ms. Banning as she first

performed her work. Although the employer had not directly warned Ms. Banning of her substandard performance, the issues had been discussed with her and Ms. Banning was aware that regulatory guidelines needed to be followed to ensure proper payment for services and the employer continued to be certified.

The purpose of the performance improvement plan was to identify, for the claimant the performance issues that needed to be improved and to ensure that Ms. Banning continued to meet the expectations that had been outlined in the performance improvement plan.

During this time, Care Initiatives was attempting to minimize costs and considering eliminating one of the Nurse Manager position at the facility where Ms. Banning was employed. Another Nurse Manager was training on MDS systems so that she could assist Ms. Banning when needed. Because the other Nurse Manager was given MDS training, Ms. Banning believed that it was the employer's intention to replace her with the other Nurse Manager in the future.

When the claimant was given the performance improvement plan on March 22, 2017, she did not discuss the portions of the plan or why they were being given to her. Ms. Banning instead personally concluded that she had been "fully meeting" all the expectations in the plan and that the employer's sole intention was to force Ms. Banning to resign so that the other Nurse Manager could take her position at the facility. Claimant did not discuss the areas of improvement needed that were listed on the plan or question the Administrator or Director of Nursing about why the plan was being implemented. Although Care Initiatives provides a "hotline" for employees to call corporate offices with any complaints how they're being treated at the facility that they are employed, Ms. Banning did not do so. The claimant presented a letter of resignation the following day, March 23, 2017, resigning her position immediately.

It is the claimant's position that the employer was in effect forcing her to resign so that a favorite employee could take her position.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer, it does not.

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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

In the case at hand, Ms. Banning left her employment with Care Initiatives when she was unexpectedly given a performance improvement plan listing a number of areas that Ms. Banning needed to improve her performance. Although Ms. Banning had been aware that there had been deficiencies related to some of her work and that management had at times had gone to extraordinary lengths to assist the claimant in catching up on her work so that the deficiencies could be avoided, Ms. Banning nonetheless believed the performance improvement plan was not only not needed but had been given to her in an effort to force her to resign her employment so that a preferred employee could be given her job.

Based upon the evidence in the record, the administrative law judge concludes that the plan was given to Ms. Banning for its stated purpose, to improve her performance, and to allow her to continue in her job as the MDS Coordinator for the facility. Ms. Banning did not take the opportunity to discuss the reasons for the impromptu performance improvement plan or to more clearly define what the employer's objectives were but instead made a decision to quit her employment because the reprimand in the form of the performance improvement plan was unacceptable to her. The reasons claimant left without discussing the issue with facilities Director of Nursing, with Administrator or be utilizing the company's "hot line" that was available to her to being concerned directly to the attention of the company's corporate offices.

The administrative law judge concludes that the performance improvement plan was reasonable under the attendant circumstances of this case. While Ms. Banning's reasons for leaving employment were undoubtedly good cause reasons from her viewpoint, they were not good cause reasons attributable to the employer, accordingly, benefits are denied.

DECISION:

The representative's decision dated May 9, 2017, Ref 01 is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn