

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA J SEE**

Claimant

**APPEAL NO: 18A-UI-07842-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 07/01/18**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 19, 2018, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 13, 2018. The claimant participated in the hearing. Rachel Gooden, Administrator; Nicole Mitchell, Director of Rehabilitation for Reliant Rehabilitation; and Alyce Smolsky, Employer Representative; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her 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 social service coordinator/activity coordinator for Care Initiatives from January 4, 2016 to July 11, 2018. She voluntarily left her employment because she was upset by the way in which the employer administered a performance improvement plan (PIP) to her.

The employer planned to issue the claimant a PIP July 5, 2018. The management employees who typically act as a witness to the warnings for the employer were both gone for the week. As a result, instead of asking one of the claimant's peers to act as a witness to the PIP, Administrator Rachel Gooden asked Director of the Rehabilitation Department for Reliant Rehabilitation Nicole Mitchell to be the witness. Ms. Mitchell works out of the employer's facility full-time and attends the employer's management meetings. After Ms. Gooden went to the claimant's office and stated she was going to give her a PIP she told her she was going to get Ms. Mitchell. She explained she was doing so because she thought it was inappropriate to use another department head that was the claimant's peer and the claimant said "okay." Just as Ms. Gooden got to the door the claimant said, "That's none of their business," but she acknowledges Ms. Gooden may not have heard her. Ms. Gooden returned with Ms. Mitchell and issued the claimant the PIP. The claimant was very upset, cried during the meeting and used profanity. As the meeting was ending, the claimant apologized to Ms. Mitchell and said,

"I'm sorry you had to see this." The claimant testified she meant she was sorry Ms. Mitchell had to act as a witness not that she was apologizing for her behavior which was how Ms. Gooden and Ms. Mitchell took her comment. The claimant and Ms. Gooden signed the PIP in the claimant's office and Ms. Mitchell signed it in Ms. Gooden's office. Before leaving the claimant's office Ms. Gooden said they were going to revisit the issues in two weeks and the claimant said, "You won't have to wait two weeks. You can consider this my two weeks. It won't even be two weeks." Ms. Gooden said she hoped that did not happen for the sake of the residents. Ms. Gooden called the corporate nurse consultant to tell her about the meeting and saw the claimant leave the building. She did not know if the claimant was leaving for lunch but the claimant did not return and Ms. Gooden went to her office and found her name tag and key. Ms. Gooden waited three consecutive working days and then determined the claimant voluntarily quit her job effective July 11, 2018, after three no-call/no-show absences.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

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.

While the claimant objected to Ms. Mitchell sitting in as the witness when Ms. Gooden issued her PIP, Ms. Gooden was trying to be considerate of the claimant. For subordinates, the department head issues the warning and Ms. Gooden acts as the witness. Usually when managers receive a written warning Ms. Gooden issues the warning and her supervisor or the corporate nurse consultant act as the witness. In this case, both Ms. Gooden's supervisor and the corporate nurse consultant were unavailable that week. Rather than asking one of the claimant's peers to act as a witness to her PIP, Ms. Gooden felt it was better to ask Ms. Mitchell who while not technically an employee of Care Initiatives, performs all of her work in the facility and attends management meetings. Ms. Gooden believed that would be less embarrassing for the claimant than asking one of her peers to sit in as a witness. Instead, the claimant objected to Ms. Mitchell acting as the witness because she was not an employee of Care Initiatives. The claimant never made Ms. Gooden aware of the fact she was upset by Ms. Mitchell being asked to witness her PIP or that she was going to quit as a result of that situation.

Ms. Mitchell's participation in the PIP was not a conflict of interest because Ms. Mitchell was not in a position to influence a decision for her personal gain. While the claimant also argues it was a violation of the employer's resident confidentiality policy, the claimant obviously is not a resident and does not enjoy the same confidentiality protections as the residents. Disciplinary

action is confidential outside the employee, the employer's representative who is issuing the warning and the witness. The administrative law judge does not find that the employer's actions violated the employer's confidentiality policy. With regard to the claimant's contention that it also violated the employee relations policy regarding third parties that is in reference to the employee bringing a third party in to represent her in a conversation with the employer rather than the employer asking an individual to witness a warning. Consequently, that policy does not apply in this situation.

Under these circumstances, the administrative law judge must conclude the claimant has not met her burden of proving that her leaving was for unlawful, intolerable, or detrimental working conditions as those terms are defined by Iowa law. The claimant's leaving was not attributable to the employer. Therefore, benefits must be denied.

**DECISION:**

The July 19, 2018, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn