

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDY F BANKS

Claimant

APPEAL NO. 11A-UI-09045-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVIS COUNTY HOSPITAL

Employer

OC: 06/05/11

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Candy Banks filed a timely appeal from the June 29, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 2, 2011. Ms. Banks participated and presented additional testimony through her daughter, Taylor Brown. The employer did not provide a telephone number for the hearing. Instead, employer representative, Pam Young, Human Resource Manager, submitted a proposed exhibit and a short note in lieu of personally participating in the hearing. The employer did not request postponement of the hearing. Exhibits One and A were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Candy Banks was employed by Davis County Hospital as a full-time housekeeper from January 2009 until May 13, 2011, when she voluntarily quit. Ms. Banks' immediate supervisor throughout the employment was Thadd Gray, Environmental Services Supervisor. Ms. Banks' daughter, Taylor Brown, also worked for the employer. Ms. Brown and Ms. Banks worked in the same department until January 2011, when Ms. Brown transferred to a different department.

On May 2, 2011, Mr. Gray met with Ms. Banks for the purpose of counseling her in connection with a couple of recent incidents. A few days earlier, Ms. Banks had forgotten that she had work keys in her possession when she left work at the end of the day. The keys were in Ms. Banks' jacket. Ms. Banks unknowingly took the keys home with her. Ms. Banks worked the next two days, but did not wear the jacket that contained the keys and did not bring the keys back to the workplace.

On Monday, May 2, 2011, Ms. Banks again appeared for work without the work keys. Mr. Gray had Ms. Banks go home to get the keys and bring them back to the workplace. Ms. Banks lived 20 miles away from the workplace. Ms. Banks was not happy about Mr. Gray's directive. When she returned with the keys, she spoke to another housekeeper and told that housekeeper that

she would have to start performing the courier work that required the keys because Ms. Banks could not be bringing them back to work on a regular basis. Ms. Banks had never before taken the keys home and had never before been asked to go home to retrieve the keys. Ms. Banks and the coworker then involved another employee from a different shift in a discussion about whether it had been fair for Mr. Gray to send Ms. Banks home to get the keys. A fourth employee was present and became involved in the discussion about whether Mr. Gray had treated Ms. Banks fairly. One of the employees reported the conversation to Mr. Gray and further alleged that Ms. Banks had used vulgar language during the discussion amongst the employees.

Later the same day, Mr. Gray summoned Ms. Banks to the meeting at which he intended to counsel her and issue a written reprimand to her regarding the discussion involving the other employees and the allegation that she had used inappropriate language. When Mr. Gray indicated that he intended to issue a written reprimand, Ms. Banks told Mr. Gray that she would not sign a written reprimand. Mr. Gray had not yet drafted the reprimand. Thus, Ms. Banks' refusal to sign the reprimand preceded the existence of the document she was refusing to sign. Ms. Banks asked what would happen if she refused to sign the reprimand, Mr. Gray told her that she would probably no longer be allowed to work for the employer. Ms. Banks told Mr. Gray that she would save the employer the effort and that she was giving her two-week notice of her quit. Ms. Banks wrote a brief resignation note that indicated May 13, 2011 would be her last day. Ms. Banks provided the note to Mr. Gray. Ms. Banks then worked until her last day and separated from the employment.

In making her decision to leave the employment, Ms. Banks considered another reprimand that Mr. Gray had issued two weeks earlier, but which he had also withdrawn. Ms. Banks had been late for a mandatory meeting. Mr. Gray had prepared a written reprimand under the belief that Ms. Banks had been entirely absent from the meeting. When Mr. Gray learned that Ms. Banks had merely been late, he notified her that he could not issue the reprimand and was destroying the reprimand.

In making the decision to leave the employment, Ms. Banks also considered an incident that occurred a year earlier. Ms. Banks had gone into the break room to check her work email prior to her scheduled break. Mr. Gray had happened upon Ms. Banks. Ms. Banks told Mr. Gray that it was just her luck that the only time she stopped to check her e-mail Mr. Gray would catch her doing it. Mr. Gray responded, "Oh, bullshit." This was the one and only time Mr. Gray had used any profanity in addressing Ms. Banks.

In making the decision to leave the employment, Ms. Banks also considered Mr. Gray's habit of redirecting her work. For example, Mr. Gray observed Ms. Banks making an unnecessary trip to take out the garbage before the end of the shift and directed her not to do that. At the beginning of the employment, Mr. Gray had directed Ms. Banks to vacuum under a desk area after he had been working in the area and observed it had not been vacuumed. Ms. Gray and her daughter both thought that Mr. Gray generally acted annoyed by questions Ms. Banks would ask and further believed that Mr. Gray generally acted as if he was annoyed by Ms. Banks' presence in the workplace.

REASONING AND CONCLUSIONS OF LAW:

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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, a voluntary quit in response to a reprimand is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28). In addition, when a worker voluntarily quits due to personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

The weight of the evidence establishes a quit in response to a proposed reprimand. Ms. Banks rejected the notion of Mr. Gray issuing a reprimand to her over her decision to involve other employees in the matter concerning the work keys and her alleged use of profanity. While Ms. Banks may have disagreed about Mr. Gray's decision to issue a reprimand, the evidence establishes nothing about that situation that would have prompted a reasonable person to leave the employment. The evidence establishes that Ms. Banks had a longstanding personality conflict with Mr. Gray. While this might have made the work at times uncomfortable, the weight of the evidence does not establish that Mr. Gray was in any way abusive or harassing toward Ms. Banks. The weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have compelled a reasonable person to leave the employment.

Ms. Banks voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Banks is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Banks.

DECISION:

The Agency representative's June 29, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs