

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW T DUKE**  
Claimant

**APPEAL NO: 12A-UI-13872-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AEROTEK INC**  
Employer

**OC: 10/14/12**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Andrew T. Duke (claimant) appealed a representative’s November 16, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Aerotek, Inc. (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on December 20, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer’s account subject to charge?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for an entity on October 11, 2012. He identified the entity as Aerotech, Inc., a different entity than Aerotek, Inc., the named employer in this case. Therefore, it is possible that the wrong employing entity was named in this proceeding. If it is subsequently determined that the entity known as Aerotech, Inc., rather than Aerotek, Inc., was in fact the claimant’s “employer,” there may need to be a further determination and proceeding directly involving that entity.

The claimant had been offered a position to work as an indoor air quality technician; the verbal offer made to him on October 11, which he accepted, was that he was to work for a base monthly wage of \$2,800.00 per month, for which he committed to make at least 16 in-home

product demonstrations per week. Upon accepting that offer, he immediately began the entity's unpaid training program. On the second day of the training, October 12, he was given a copy of the contract under which he would be working. The contract specified that he would be an "independent contractor," and that he would be paid on a commission only basis. As this was not the terms to which the claimant had agreed to work on October 11, he ceased reporting for the training program. He received no compensation for the two days that he had been engaged in training.

As the claimant had left other employment to work for the entity, he then established a claim for unemployment insurance benefits effective October 14, 2012. He seeks unemployment insurance benefits for the benefit weeks ending October 20 and October 27, 2012; after those weeks, he secured other employment and is no longer seeking benefits.

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

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. First, there is a serious question in this case as to whether the claimant's relationship with the employing entity was that of an employee for an "employer," or that of an independent contractor. If the claimant was not actually employed as an employee, then his leaving of that relationship would not have any bearing on his eligibility for unemployment insurance benefits. However, this is an issue that was not presented or noticed for determination in this case, and this administrative law judge therefore lacks jurisdiction to rule on that question. For purposes of the remainder of this decision, it will be assumed that the claimant's relationship was in fact that of an employee for an employer.

A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). While the employer may have had a good business reason for changing the terms of employment it was offering to the claimant from being a base salary to commission only, the change in the claimant's employment agreement which was being implemented was a substantial change in the claimant's contract of hire. *Dehmel*, supra. Benefits are allowed.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began July 1, 2011 and ended June 30, 2012. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's November 16, 2012 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs