

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEFTALY A MEDRANO
Claimant

APPEAL NO. 12A-UI-02252-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 01/01/12
Claimant: Respondent (4-R)

Section 96.5-1 – Voluntary Quit
871 IAC 23.43(4)b – Supplemental Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated February 21, 2012, reference 01, that held claimant was laid-off for lack of work on January 5, 2012, and benefits are allowed. A hearing was held on March 21, 2012. The claimant did not participate. Dennis Panosh, On-site Manager, and Pixie Allan TALX representative participated for the employer.

ISSUES:

The issue is whether the claimant voluntary quit with good cause attributable to the employer.

The issue is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant started work for the temporary employment firm on assignment at Rock-Tenn as a full-time laborer beginning October 4, 2011. His last full period of work was the week ending January 7, 2012. He worked January 11, 12 and February 21. He worked March 5, 6, 7 and 8. The employer representative protested claimant's unemployment claim as a voluntary quit effective January 5, 2012.

The employer knew claimant's resident alien (green card) was expiring March 8, and he had been given 30-day notice to renew. The claimant stopped reporting for work after March 8, and he provided no information to the employer whether he had renewed his work status.

The department record shows claimant had worked for other base period employer(s) in order to be eligible for benefits. Claimant failed to respond to the hearing notice.

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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to his part-time employer on March 8, 2012 when he ceased reporting to work.

The claimant ceased working for the employer when he was unable to establish his resident alien status after his green card had expired. This employment separation is considered a voluntary quit without good cause part-time employment that is not disqualifying, because claimant's benefit eligibility is based on other base period employment. Benefits paid to claimant are not assessed against the part-time employer's account.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the issue whether claimant is able and available for work due to the expiration of his green card is remanded to Claims for fact-finding. There is an issue whether claimant has re-established his resident alien status (green card) after it expired March 8, 2012.

Since the employer erroneously protested claimant's claim as an employment separation on January 5, 2012 when by its own testimony he worked for the employer, thereafter, its relief from benefit charges for the period from January 1 through March 8 is based on the supplemental employment provisions of the Iowa Employment Security law (871 IAC 23.43(4)b).

DECISION:

The decision of the department representative dated February 21, 2012, reference 01, is modified. The claimant voluntarily quit without good cause part-time employment on March 8, 2012. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not charged. The issue whether claimant is able and available for work effective March 8, 2012 is remanded to Claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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