

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDRE PIERCE**  
Claimant

**APPEAL NO. 11A-UI-13277-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AXCESS STAFFING SERVICES LLC**  
Employer

**OC: 08-28-11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 28, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 3, 2011. The claimant participated in the hearing. Dennis Pannich, on-site manager, and Kevin Salmon, employer's representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his 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 part-time packer for Axxcess Staffing Services from October 16, 2010 to June 12, 2011. The claimant was assigned to work at Rock Tenn and the employer has work for its employees at Rock Tenn every day. Employees must arrive and sign up early in the morning to start their 5:30 a.m. shift. Employees who have been working on a line for a few days are usually chosen first and then other employees who have signed in are chosen for other lines. The claimant showed up and worked January 8, April 16, 25, 29, and 30, May 15, and June 12, 2011. The claimant was not working anywhere else during this time period but was collecting unemployment and did not want to reduce his benefits with wages because his child support payments were being deducted from his unemployment. He was also frustrated about having to wait in line and not always being chosen because the client first chooses a core group who shows up each day and covers lines that have to be shipped early. Sometime the client will state it needs a certain group to return without having to sign in for the jobs. The claimant has not made any contact with the employer since June 8, 2011. Continuing work is available.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 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 at first glance this case could be considered one of assignment to spot jobs that were completed with each day worked, the claimant could have worked nearly every day had he shown up. Instead, the claimant chose not to wait in line for work and collected unemployment benefits. Because the employer had work available almost every day, and the claimant could have worked more had he shown up more than seven days in 2011, the administrative law judge must conclude the claimant voluntarily left his employment without good cause attributable to the employer. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

#### **DECISION:**

The September 28, 2011, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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