

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA C DURON
Claimant

APPEAL NO: 11A-UI-03532-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 03/14/10
Claimant: Respondent (5)

871 IAC 24.1(113)a – Layoff
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Axcess Staffing Services, L.L.C. (employer) appealed a representative’s March 10, 2011 decision (reference 01) that concluded Maria C. Duron (claimant) was qualified to receive unemployment insurance benefits after a temporary separation from employment. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on April 12, 2011. The claimant participated in the hearing. Cynthia Castillo appeared on the employer’s behalf. Ike Rocha served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. It provides contract labor employees to its Iowa City, Iowa business client. The business client has a varying number of labor positions available for each shift, each day. The claimant began working on this assignment through the employer on June 1, 2010. The claimant’s assigned shift for which she might have work with the business client is Friday through Monday, 5:30 a.m. to 2:45 p.m., working as a packer. The employer’s employees wishing to work are to report to the employer’s office at the business client; the first employees who report up to the number of positions the business client has available are allowed to work; employees who arrive after the number of positions has been filled are turned away.

From January through March work was sufficiently slow that the claimant was being turned away most days that she reported for work. Sometimes a representative from the employer would contact her in advance and inform her that there was no work and she need not report, and other times the claimant would call the employer’s representative before reporting and would be told that there was not sufficient work. Work began to pick up for the business client

and the claimant toward the end of March and early April. As of the date of the hearing, the claimant had most recently worked at the business client on April 11.

The claimant established an unemployment insurance benefit year effective March 14, 2010. She reopened the claim by filing an additional claim effective January 23, 2011, as work with the employer was slow at that time and she was no longer also working at the third of the three jobs she had been working.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

There were multiple times beginning in January 2011 where the claimant was in effect laid off by the employer due to the lack of work at the business client; the employer had no work it could provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

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 October 1, 2008 and ended September 30, 2009. 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 chargeable for benefits paid to the claimant during her March 14, 2010 benefit year. Should the claimant establish a new benefit year in the future, her employment status with the employer at that time may need to be re-evaluated.

DECISION:

The representative's March 10, 2011 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant was laid off from the employer at various times between January and March 2011 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not subject to charge in the claimant's March 14, 2010 benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs