

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIBURO INNOCENT
Claimant

APPEAL NO: 12A-UI-14370-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 08/26/12

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Axcess Staffing Services, L.L.C. (employer) appealed a representative's November 27, 2012 decision (reference 02) that concluded Miburo Innocent was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 10, 2013. The claimant 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. Connie Hickerson of TALX Employer Services appeared on the employer's behalf and presented testimony from one other witness, Dennis Panosh. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began an assignment on June 11, 2012. He worked full time as a "B shift" packer on a Monday through Thursday schedule at the employer's Iowa City, Iowa business client. His last day on the assignment was the shift from 3:45 p.m. on Thursday, October 4 to 1:30 a.m. on Friday, October 5, 2012. He was next scheduled to work on Monday, October 8. The claimant did not return to work for his shifts on and after that date. Continued work was available on the assignment had the claimant continued reporting for work.

The claimant established a claim for unemployment insurance benefits effective August 26, 2012. The claimant has received unemployment insurance benefits for the benefit week after the separation, the week ending October 13, 2012. The administrative law judge observes that the claimant did not report any wages he would have earned in his employment with the employer when he was making weekly continued claims during the period of August 26 through October 6, 2012.

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.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are 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 § 96.3-7. In this case, the claimant has received benefits for a benefit week after the separation but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

There is some evidence that the claimant was receiving income that should have been reported to reduce his benefits prior to the ending of the employment. This is a matter not included on the notice of hearing, and the administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to the Investigations and Recovery Unit to determine if the claimant was receiving wages that he failed to report.

DECISION:

The representative's November 27, 2012 decision (reference 02) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 8, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is

otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue. The matter is remanded to Investigations and Recovery for investigation and determination of the unreported wage issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css