

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN J BOTELLO

Claimant

APPEAL NO. 12A-UI-10639-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC

Employer

OC: 07/08/12

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 24, 2012, reference 03, decision that allowed benefits based on an agency conclusion that the claimant has separated from the employer for good cause on July 8, 2012. After due notice was issued, a hearing was held on September 26, 2012. Claimant Juan Botello did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Tom Halpin of TALX represented the employer and presented testimony through Dennis Panosh.

ISSUE:

Whether the claimant separated from the employer on July 8, 2012 for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency that provides employees to Rock Tenn in Iowa City. The employer maintains an office onsite at the Rock Tenn facility. Juan Botello started his full-time assignment at Rock Tenn and continued to work until July 8, 2012. After that, Mr. Botello ceased appearing for work, though Axxcess Staffing and Rock Tenn continued to have work for Mr. Botello in the assignment. Mr. Botello recently returned to work at Rock Tenn through Axxcess Staffing. Mr. Botello has never provided a reason or explanation for his failure to appear for work for weeks or months after July 8, 2012.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record establishes that Mr. Botello did not complete the assignment on July 8, 2012, but instead voluntarily quit the employment effective July 8, 2012. The voluntary quit was for personal reasons known only to Mr. Botello and not for good cause attributable to the employer. Effective July 8, 2012, Mr. Botello was disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representatives August 24, 2012, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 8, 2012. Effective July 8, 2012, the claimant was disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css