

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEDIR Y KEMAL
Claimant

APPEAL NO: 11A-UI-01623-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 12/19/10
Claimant: Respondent (5/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Axcess Staffing Services, L.L.C. (employer) appealed a representative's January 31, 2011 decision (reference 03) that concluded Kedir Y. Kemal (claimant) was qualified to receive unemployment insurance benefits after a supposed separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on February 23, 2011. He indicated that he was not going to participate in the hearing, and was advised to submit a written statement to that effect in lieu of his participation, which he did not do. Cynthia Castillo appeared on the employer's behalf. 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 claimant started working for the employer on September 28, 2009. He works part time on a walk-in basis at the employer's Iowa City, Iowa packaging business client. That business client is the employer's only business client in the area, and the claimant's assignment there is ongoing. He is not required to report on any specific days, but if he wishes to work, he reports at start up, and if there is enough work that he is needed, he can work. If he reports on continuous days, he would gain priority over someone who had not reported for work on the prior days. As of the date of the hearing he had most recently worked for the employer on March 6, 2011.

The claimant's work at the employer's business client is in addition to a full-time job elsewhere, and to another part-time job elsewhere. He sought unemployment insurance benefits for the two benefit weeks ending December 25, 2010, and January 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c).

There has not been a separation from employment between the claimant and the employer. Rather, the appropriate question which should be addressed is whether the claimant is still employed under his same hours and wages with the employer, and consequently whether the employer's account is subject to charge for the benefits paid to the claimant. Iowa Code § 96.19-38-b; 871 IAC 23.43(4)(a). These issues were not included in the notice of hearing for this case, so this administrative law judge does not have jurisdiction to address the questions. The case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's January 31, 2011 decision (reference 03) is modified with no immediate effect on the parties. There was no separation from employment, so there is no resulting disqualification issue to be resolved. The matter is remanded to the Claims Section for investigation and determination of the still employed at the same hours and wages and chargeability of the employer issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs