

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAN F BACATAN**  
Claimant

**APPEAL NO. 12A-UI-00059-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AXCESS STAFFING SERVICES LLC**  
Employer

**OC: 11/20/11  
Claimant: Respondent (5-R)**

871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 28, 2011, reference 02, decision that allowed benefits and that concluded the issues related to the claimant's separation from the employment had previously been adjudicated as part of an earlier claim. After due notice was issued, a hearing was held on January 23, 2012. Claimant Adan Bacatan did not respond to the hearing notice instructions to provide a telephone number for the hearing. Mr. Bacatan instead submitted a letter in lieu of participating in the hearing. Tracy Taylor of Talx represented the employer and presented testimony through Dennis Panosh. Exhibit A was received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-16248-JTT.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer supplies workers to Rock Tenn in Iowa City. Rock Tenn packages Proctor & Gamble products. Adan Bacatan was employed by AxcCESS Staffing Services as a full-time packer from 2009 and last performed work for the employer on October 25, 2011. Toward the end of Mr. Bacatan's employment, AxcCESS Staffing representative Esmeralda Montalvo told Mr. Bacatan that his non-resident work authorization was about to expire on November 3, 2011 and that he had to provide updated work authorization to continue in the employment. The employer refused to allow Mr. Bacatan to return to the employment. Ms. Montalvo had further contact with Mr. Bacatan on December 19, 2011 and told Mr. Bacatan to provide updated work authorization.

## REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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

a. Layoffs. A layoff is a suspension from pay status 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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 employer has the burden of proving that a claimant is disqualified for benefits. See Iowa Code § 96.6(2). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer's witness lacked personal knowledge concerning the circumstances surrounding the claimant's October 25, 2011 separation from the employment. The employer indicated that Axxcess Staffing representative Esmeralda Montalvo had separated from the employer just a week before the appeal hearing. The employer had the ability either to present testimony from Ms. Montalvo or present a written statement from Ms. Montalvo, but did not present such evidence. The weight of the evidence indicates that the employer laid off Mr. Bacatan effective October 25, prior to the expiration of his work authorization. Because the separation was based neither on a voluntary quit or a discharge for misconduct, it would not disqualify the claimant for unemployment insurance benefits. See Iowa Code § 96.5(1) and (2)(a). The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

The evidence raises the question of whether the claimant has met the work availability requirement since he established the new original claim for benefits that was effective November 20, 2011. The matter will be remanded to the Claims Division for determination of that issue.

**DECISION:**

The Agency representative's December 28, 2011, reference 02, decision is modified as follows. The claimant was laid off effective October 25, 2011. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

The matter is remanded to the Claims Division for determination of whether the claimant has been available for work since he established the new original claim for benefits that was effective November 20, 2011.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs