

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALENA A READUS
Claimant

APPEAL NO. 13A-UI-08615-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

**OC: 06/16/13
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 15, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 29, 2013. Claimant participated. The employer participated by Ms. Leslie Bbler, Hearing Representative, and witness, Ms. Genie Harshbarger, Site Supervisor.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Salena Readus was employed by Axxcess Staffing most recently from February 25, 2013 until April 27, 2013 when Ms. Readus quit employment and did not return to available work. Ms. Readus was assigned to work at the Rock-Tenn Warehouse Company as a packer but left employment for personal reasons while continuing employment was available to her. Claimant had not been laid off or told no work was no longer available.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left employment with good cause attributable to the employer. It does not.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2).

In this matter the evidence establishes the claimant discontinued reporting for available work for personal reasons that were not attributable to the employer. Unemployment insurance benefits are withheld.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge remands the claim to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the employer has participated in the fact-finding or whether the claimant will have to repay the benefits or if the benefits will be charged to the employer.

DECISION:

The representative's decision dated July 15, 2013, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid, the amount of the overpayment and whether the employer participated in the fact-finding and whether the claimant will have to repay the benefits or if the benefits will be charged to the employer is remanded to the Claims Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs