

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOSEPH D CRUM
1007 RIVER DR
SIOUX CITY IA 51109**

**FRESH START JANITORIAL
SERVICES INC
729 E 11TH ST
SOUTH SIOUX CITY NE 68776**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 05A-UI-02718-JTT
OC: 02/06/05 R: 01
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
871 IAC 24.26(1) – Change in the Contract of Hire.

STATEMENT OF THE CASE:

Joseph Crum filed a timely appeal from the March 7, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2005. Mr. Crum was represented by Richard Sturgeon and participated personally in the hearing. The employer participated through Don Droke, Secretary/Treasurer, who presented additional testimony through Karen Droke, President/Owner. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Crum was employed by Fresh Start Janitorial Services as a full-time supervisor from February 22, 2002 until January 28, 2005, when he voluntarily quit the employment.

On January 26, 2005, the employer had called Mr. Crum in to work on a cleaning project on his scheduled day off. Mr. Crum was first contacted by the other supervisor, Jean, and Mr. Crum indicated during that discussion that he did not wish to come to work. Mr. Crum was subsequently contacted by Don Droke, Treasurer/Secretary, who instructed him to appear for work. Mr. Droke advised Mr. Crum that he would receive Friday, January 28, off instead. Mr. Crum went into work.

On or about January 27, 2005, the employer presented Mr. Crum with a proposed non-compete agreement. Mr. Crum has expertise in floor and carpet care. The proposed agreement would have prevented Mr. Crum from establishing and operating a cleaning service within a 20-mile radius of the area serviced by the employer. The proposed agreement would also have prevented Mr. Crum from promoting a cleaning service within that same radius. The employer conditioned Mr. Crum's continued employment on Mr. Crum signing the non-compete agreement. Mr. Crum did not want to sign the non-compete agreement.

Mr. Crum then worked a scheduled overnight shift on January 27. Mr. Crum left that shift earlier than the employer wanted him to. However, Mr. Crum believed he had discretion to decide when it was appropriate for him and other employees to leave. Mr. Crum decided to take an employee home after he and the employee finished cleaning one building and made certain that another employee was on schedule to complete another. The employer intended to reprimand Mr. Crum for the early departure.

Also on January 27, the other supervisor contacted Mr. Crum and advised him that he would need to work on January 28 because the employer had scheduled yet another project on short notice. Mr. Crum indicated his refusal to surrender the re-scheduled day off. The other supervisor indicated she would advise the owner, Karen Droke, of Mr. Crum's refusal to work.

On January 28, Mr. Crum did not go into work as the employer had requested. Mr. Crum was not home when Ms. Droke called his home. Ms. Droke spoke with Mr. Crum's fiancé. During the conversation, Ms. Droke indicated that she was taking a paycheck away from Mr. Crum. On January 29 and 30, Ms. Droke left messages on Mr. Crum's answering machine, but did not receive a response. Mr. Crum's next scheduled shift was Sunday, January 30. Mr. Crum did not appear for that shift.

Mr. Crum made contact with the employer on February 1. At that time, Mr. Crum inquired whether he still had a job and was advised the employer had concluded that he had quit. Mr. Crum made arrangements with Ms. Droke to meet the following Friday and discuss his employment status. Mr. Crum appeared at the workplace on the following Friday, but did not arrive until after Ms. Droke had departed on business at 2:00 p.m. There was no subsequent contact.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Crum's voluntary quit was for good cause attributable to the employer. It does.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that Mr. Crum's quit was in response to three changes in the conditions of his employment. The quit was in response to the employer's demand that he execute a non-compete agreement. The employer sought to impose this as a new condition of Mr. Crum's employment. Mr. Droke testified that Mr. Crum would not have continued in the employment if he did not sign the non-compete agreement. The quit was also in response to the employer's demand that Mr. Crum work on January 28 and surrender his re-scheduled day off to complete a project the employer had scheduled at the day before. Mr. Crum had just surrendered a day off two days prior and refused to do so again. Finally, the quit was in response to the employer's refusal to pay Mr. Crum for work he had previously performed. Specifically, Ms. Droke indicated in a conversation with Mr. Crum's fiancé that the employer was going to take a paycheck away from Mr. Crum.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Crum voluntarily quit the employment due to three significant changes in the contract of hire. See 871 IAC 24.26(1). The administrative law judge further concludes that the quit was for good cause attributable to the employer. Accordingly, Mr. Crum is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's decision dated March 7, 2005, reference 01, is reversed. The claimant quit for good cause attributable to the employer. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/sc