

**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**

**WILLIAM S SMITH  
7316 SE 23<sup>RD</sup> ST UNIT 7  
DES MOINES IA 50320-9209**

**ALLIED CONSTRUCTION SERVICES  
2122 FLEUR DR  
PO BOX 937  
DES MOINES IA 50304**

**Appeal Number: 06A-UI-01820-SW  
OC: 01/15/06 R: 02  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 9, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on March 7, 2006, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Dennis Snyder participated in the hearing on behalf of the employer with a witness, Steve Munger.

FINDINGS OF FACT:

The claimant worked for the employer from April 15, 1986, to January 18, 2006, as a journeyman painter. Construction work was slow during the week of January 16, but the employer was attempting to avoid having to lay workers off by assigning them other projects and work to in addition to painting jobs.

At the beginning of the day on January 18, 2006, the supervisor, Dennis Snyder, assigned the claimant the job of sandblasting a couple of benches and some gang boxes. The claimant had an upper respiratory infection that made breathing difficult, and he believed that having to wear the sandblasting hood would restrict his breathing more. He told Snyder that wanted to do something else. The claimant at that point said nothing about being unable to do the job because of breathing problems. Snyder then told the claimant there was no other work available. The claimant went and got his time sheet and turned it in to Snyder. Snyder became angry and asked if he was quitting. The claimant responded that quitting was not the point, but it would be nice if Snyder had showed consideration for his health and put him somewhere else to work. After that exchange, the claimant left the shop and went and applied for jobs at other business and applied for work at the union hall.

The claimant believed that Snyder knew or should have known when he assigned the sandblaster job to the claimant that he was sick because he had been coughing and sneezing the week before. He believed Snyder's comment about there being no other work meant he was laid off. Snyder did not know that the claimant had an illness that prevented him from sandblasting. Snyder's comment meant there was no work other than sandblasting that day and was not indicating he was being laid off or that there was nothing other than sandblasting to do for the rest of the week or after that week.

#### REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The claimant was not laid off due to lack of work or discharged. Snyder did not tell the claimant there was no more work; he told the claimant for that day the only work available for him was the work he had assigned him, which was the sandblasting work. The claimant then chose to leave work rather than doing the work assigned and decided to look for other work rather than going back to the employer the next day.

The claimant voluntarily quit employment because he was upset that Snyder would assign him a job sandblasting even though he was sick. Even if Snyder knew that the claimant had been coughing and sneezing before January 18, he would not necessary know that the claimant was sick on January 18. Coughing and sneezing are often symptoms of the common cold, a condition that individual can either recover quickly from or can stay with a person for days. When the claimant initially asked for a different job, he did not state directly it was because of medical reasons. He mentioned his health after he had turned in his time card and was about to leave. Good cause attributable to the employer for quitting employment has not been established. The claimant has not proven intolerable work conditions or that he quit employment with a doctor's advise or due to a medical condition caused by or aggravated by working condition, which would establish good cause to quit under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated February 9, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/tjc