

**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**

**RAYMOND J FULLER
1911 WASHINGTON AVE
DES MOINES IA 50314**

**JACOBSON INDUSTRIAL SERVICES
PO BOX 224
DES MOINES IA 50301**

**Appeal Number: 05A-UI-07189-HT
OC: 06/12/05 R: 02
Claimant: Appellant (4)**

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(3) – Quit /Other Employment

STATEMENT OF THE CASE:

The claimant, Raymond Fuller, filed an appeal from a decision dated July 8, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 1, 2005. The claimant participated on his own behalf. The employer, Jacobson Industrial Services (Jacobson), did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Raymond Fuller was employed by Jacobson from August until October 11, 2004. He was a full-time janitor.

The claimant had been counseled when the employer received a complaint of sexual harassment on October 6, 2004. On October 8, 2004, he was counseled about eating product on the job. He denied eating anything and the employer said it would investigate further. However, the claimant believed he was going to be fired and immediately sought, and obtained, a job with DES Staffing.

The records of Iowa Workforce Development indicate the claimant did work for, and earn wages from, DES Staffing, in the third and fourth quarters of 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The claimant had been counseled about the sexual harassment complaint and eating product on the job. That caused him to stop coming to work because he feared he would be discharged. However, he did not notify anyone at Jacobson he was quitting, which caused him to be considered a voluntary quit by being no-call/no-show to work after October 8, 2004. Before he was officially a "quit" from Jacobson he had other employment with DES Staffing. He requalified under the provisions of the above Iowa Code section.

DECISION:

The representative's decision of July 8, 2005, reference 02, is modified in favor of the appellant. Raymond Fuller is qualified for benefits provided he is otherwise eligible. However, the account of Jacobson Industrial Services shall not be charged with benefits paid to the claimant.

bgh/kjw