

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE L WINTHER**

Claimant

**APPEAL NO. 08A-UI-04908-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**

Employer

**OC: 02/24/08 R: 03  
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Beef Products, Inc. (BPI) filed an appeal from a representative's decision dated May 19, 2008, reference 03, which held that no disqualification would be imposed regarding Joe Winther's separation from employment. After due notice was issued, a hearing was held by telephone on June 5, 2008. Mr. Winther participated personally and offered additional testimony from Kristina Winther. The employer participated by Ron Wood, Human Resources Manager, and Jennifer Stubbs, Human Resources Benefits Specialist.

**ISSUE:**

At issue in this matter is whether Mr. Winther was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Winther worked for BPI from April 1 until April 28, 2008 as a full-time laborer. He was not hired as a temporary employee but did have to serve a 90-day probationary period. His job primarily involved cleaning tasks that required him to be on his feet for prolonged periods of time. He had undergone surgical procedures on both legs several years prior to his employment with BPI. Mr. Winther found that the work at BPI caused swelling of his knees.

Mr. Winther saw his doctor on April 18 because he was experiencing flu-like symptoms. He told the doctor about the swelling in his knees caused by the work. He also mentioned to the doctor that he felt chemicals he used at work were aggravating his asthma. His doctor did not advise him to quit the employment. A form returned to the employer by Mr. Winther's doctor indicated he could return to work without restrictions as of April 28, 2008.

Mr. Winther did not ask the employer to accommodate his leg condition or his asthma by assigning him different work. He sometimes drove a forklift in his work but did not ask if such work might be available on a full-time basis. He did not seek additional personal protective gear

that might minimize his exposure to chemicals at work. Mr. Winther told the employer that, because of the swelling in his knees, he was quitting the job to go to school. He does not have any definite plans to attend school.

Mr. Winther filed an additional claim for job insurance benefits effective April 27, 2008. He has received \$373.00 in job insurance benefits for each of the four weeks ending May 24, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Winther quit because of swelling in his knees caused by the employment. It is noteworthy that his doctor released him to return to his job without restrictions as of April 28, the day he quit. He testified that he had advised his doctor of the problem with his knees and that his asthma was apparently aggravated by something at work. In spite of these factors, the doctor released him to return to the work. However, that does not end the inquiry.

Where an individual quits employment because of a medical condition caused or aggravated by the employment, he must first put the employer on notice of the medical problem and must notify the employer that he intends to quit if the problem is not resolved or he is not reasonably accommodated. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). In the case at hand, BPI was not given a full and fair opportunity to try to accommodate Mr. Winther. There was no opportunity to try to find him a position that would not cause his knees to swell. There was no opportunity to see if additional gear was available to prevent his exposure to chemicals that might aggravate his asthma. There was no opportunity to try to find a placement where he would have no or minimal exposure to chemicals. The employer may well have been unable to find a suitable accommodation for Mr. Winther. However, it was given no opportunity to do so.

The administrative law judge appreciates that Mr. Winther told his supervisors that his knees hurt. The administrative law judge does not believe this was sufficient to put the employer on notice that he intended to quit if there were no changes in his job duties or work environment. It was up to the employee to put the employer on notice that his complaints went beyond mere "grumbling" about hard work. Because BPI was given no real opportunity to salvage the employment relationship, it is concluded that Mr. Winther did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied.

Mr. Winther has received job insurance benefits since filing his additional claim effective April 27, 2008. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated May 19, 2008, reference 03, is hereby reversed. Mr. Winther quit his employment with BPI for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Winther has been overpaid \$1,492.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs