

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

JEFF B SIMMONS
2902 PETERS AVE
SIOUX CITY IA 51106

SIOUX CITY COMMUNITY SCHOOL DIST
ATTN: STEVE CRARY
1221 PIERCE
SIOUX CITY IA 51105-0000

ROBERT GREEN
ATTORNEY AT LAW
PO BOX 2519
SIOUX CITY IA 51106-0519

DAWN MASTALIR
ATTORNEY AT LAW
PO BOX 3207
SIOUX CITY IA 51102-2307

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 4, 2005, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A hearing was held on April 25, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Robert Green, attorney at law. Dawn Mastalir, attorney at law, participated in the hearing on behalf of the employer with witnesses, Steven Cray and Jim Cosier. Exhibits A through E and One were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked as a custodian for the employer from August 19, 1991, to February 7, 2005. For the last several years, the claimant has worked at North Middle School. The claimant has been diagnosed with arthritis and degenerative disc disease in his back.

Appeal Number: 05A-UI-03628-SW
OC: 03/06/05 R: 01
Claimant: Respondent (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, 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)

In approximately July 2004, the employer began requiring custodians at North Middle School to use a backpack vacuum cleaner. Prior to that time, the claimant had always used an upright vacuum. He attempted to use the backpack vacuum cleaner but found that it aggravated his back condition. When he complained to his supervisor, he was informed that he would need a doctor's note in order to be accommodated. The claimant went to the doctor on August 10, 2004. The doctor prepared a note reciting the claimant's history of back problems and stating that the claimant should be allowed to use an upright vacuum cleaner. The claimant also obtained a document from a physical therapist with an occupational health clinic stating, "he is not to use the backpack vacuum as this will irritate his mid-back causing him inflammation and pain."

Starting September 9, 2004, claimant was off work due to back problems. A physician examined him on September 15, 2004, and released the claimant to return to work with restrictions that he lift no more than 10 pounds and not repetitively bend and twist at the waist for one week. When he returned to work in September, his supervisor informed him that he was going to have to use a different model of vacuum. The model called, the "tailback" is smaller and rides on the hips rather than higher on the back. The claimant's supervisor told the claimant that he was going to have to make the vacuum cleaner work.

After using the tailback vacuum cleaner, the claimant still have problems because the straps for the vacuum cleaner caused him back pain. The instructions for the vacuum cleaner show how a person can use the vacuum by carrying it by its handle. The claimant began using the vacuum cleaner carrying it by its handle without the straps to avoid aggravating his back condition. The claimant performed his work successfully carrying the vacuum cleaner and was never counseled regarding using the vacuum cleaner with the handle rather than strapped on his back.

In early January 2005, the claimant was off work on medical leave due to an off-duty injury that he suffered while ice fishing. The claimant was released to return to work on February 7, 2005. When the claimant spoke with his supervisor about his return to work, his supervisor asked him if he had been strapping on or carrying the vacuum cleaner. This was because the supervisor had been informed while the claimant was off work that the strap had been taken off the vacuum. The claimant responded that he had been told to make the vacuum cleaner work and since it bothered his back, he had been carrying it. His supervisor informed him that he would have to strap on the vacuum cleaner and would not be allowed to carry it by its handle anymore. The supervisor asserted that wearing the vacuum cleaner was the only way to efficiently clean. The claimant responded that he had been getting his job done carrying the vacuum. The supervisor informed the claimant that the only way to accommodate him would be to move him to a different school, but since there were no openings, he was going to have to use the vacuum the correct way until a job opened up. The claimant asked if the employer would accommodate him by allowing him to use an upright vacuum until there was an opening at another school. The supervisor informed him that that was not possible.

The claimant then told his supervisor that if that was his only option, he was going to have to quit his employment. The supervisor did not suggest any other alternatives. The claimant then submitted a written resignation from his job on February 7, 2005, which was accepted by the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified believably that Cosier brought up the issue of wearing the backpack. This is more likely than not because Cosier discovered while the claimant was off work that the straps had been removed. The evidence establishes that working conditions demanded by the employer were intolerable. The claimant was required to wear a vacuum cleaner strapped to his back that aggravated his back condition. He was given no option other than wearing the tailback vacuum until an opened came up at other school. Since the claimant had been performing his work without incident or complaint and was using the vacuum cleaner the employer wanted him to use, the demand that he not carry it was unreasonable. The claimant notified his supervisor that he would have to quit if that was his only option and no other option was given to the claimant. The claimant, therefore, quit work with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated April 4, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs