

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**PERRY R GAMBLIN**

Claimant

and

**ALPHA SERVICES INC**

Employer

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**HEARING NUMBER: 17BUI-13012**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.5-1

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law to include the following as supportive legal analysis:

871 IAC 24.26(6)"b" provides:

*Employment related separation.* The claimant was compelled to leave employment because of an illness injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of the employment and constitute good cause attributable to the

employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

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In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In addition, the court in *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993), the Court established three elements that are required for a quit to be found with good cause attributable to the Employer:

- 1) Claimant must notify the employer of the work-related health condition;
- 2) Claimant must inform the employer the claimant will quit if reasonable accommodation not provided;
- 3) And Claimant must give the employer reasonable amount of time to provide reasonable accommodation.

If any or all of these elements are missing, the quit is *without* good cause.

Lastly, the Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv