



and needed about an hour each way to commute to and from work and to put on and take off his protective clothing.

All was well with the job until mid-August, 1992. The petitioner suffers from chronic allergies, and they began to act up at that time. His problems included a runny nose, watery eyes, and other cold-like symptoms. At work it became virtually impossible for the petitioner to constantly have to wipe his nose, because each time he did so he would have to leave the "clean work" area.

To avoid this problem he began taking over-the-counter antihistamines, but found they made him drowsy. Even with the medication, however, he wasn't sleeping well at night, especially when he had to work consecutive days and only had ten hours of "free time" between shifts. At work the petitioner tried to "strike a balance" between his symptoms and the drowsiness caused by his medication, but by the second or third consecutive day of a twelve-hour shift he found himself actually falling asleep on the job.

Understandably, the petitioner's supervisor became concerned about this problem and confronted the petitioner about it. The petitioner explained his dilemma and the supervisor suggested that the petitioner visit the company's infirmary. The petitioner did so, but was told there was nothing they could do and to see a doctor. However, the petitioner was relatively new to the area and did not have a regular family doctor and, though he tried, he could not get

an appointment with one for several weeks. Over the next couple of days at work the petitioner continued to feel drowsy and occasionally fell asleep.

On September 2, 1992, the supervisor advised the petitioner that he could no longer tolerate him sleeping on the job. He stated that company policy required temporary employees to be discharged if they were too ill to work. The supervisor suggested to the petitioner that he might be "better off" if he quit rather than being fired. The petitioner, considering the fact that there were only two months of work left for him anyhow, decided at that time (much to his later regret) to quit the job.

The petitioner applied for food stamps shortly thereafter, but was denied when the Department determined that he had voluntarily quit his last job. By the time of his fair hearing (held on November 20, 1992) the petitioner had seen a doctor and his allergy symptoms had abated. The doctor had verified that the petitioner suffered from allergies, but because he had not seen the petitioner until several weeks later (by which time the petitioner's symptoms had already abated somewhat on their own) he declined to comment on whether the petitioner was incapable of working during the time in question.

At the hearing, the petitioner's version of the events leading up to his leaving the job was consistent with, and uncontroverted by, that of his supervisor (who also testified at the hearing). The hearing officer deemed the

petitioner to be a sincere and credible individual. In hindsight, the petitioner's decision to leave his job before he was fired was surely ill-advised. However, despite the lack of medical evidence, the petitioner's testimony that he became physically unable to satisfactorily perform the job was convincing and uncontroverted. It is also uncontroverted that the petitioner would have been fired from the job had he not quit.

Indeed, the petitioner's decision to quit was hardly unilateral considering the circumstances. The supervisor admitted that he advised the petitioner that he would be "better off" if he quit rather than being fired. Given the credible evidence that the petitioner was, in fact, physically incapable of performing his work satisfactorily, it is found that the petitioner's leaving the job was as much a negotiated "termination" by the petitioner's employer as it was a "voluntary quit" by the petitioner.

ORDER

The Department's decision is reversed.

REASONS

Food Stamp Manual (F.S.M.) § 273.7(n) provides for a 90-day disqualification from benefits if the head of a food stamp household voluntarily quits a job without "good cause" within 60 days of that household's application for food stamps. Included as "good cause" under these provisions is leaving a job due to "circumstances beyond the (household) member's control, such as...illness..." F.S.M. § 273.7(m).

In this case, even if it could be concluded that the petitioner "voluntarily quit" the job in question (which, as discussed above, is itself open to question) it is found that his allergies rendered him physically unable at that time to perform the job to his employer's satisfaction. Thus, the "good cause" exceptions in the above regulations are applicable and the petitioner should not be disqualified from receiving food stamps.

The Department's decision appears to be based mostly on its determination that the petitioner's allegations regarding the severity of his illness were not supported by sufficient medical evidence. However, as discussed above, the hearing officer found the petitioner's testimony credible. It was also uncontroverted, by either the petitioner's employer or any medical evidence. The Department has not cited any regulation requiring that an applicant's allegations of illness as good cause for having quit a job be verified by medical evidence. Nor has the Department shown that as a matter of law the board's hearing officer (or, for that matter, the Department itself) is prohibited from crediting such allegations solely on the basis of the petitioner's testimony.<sup>1</sup>

For all the above reasons, the Department's decision in this case is reversed.

FOOTNOTE

<sup>1</sup>To the contrary, see F.S.M. § 273.7(n)(4).