

# Eighth Circuit: Custodian Failed to Establish Constructive Discharge Following Wife's Public Comments

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A school custodian's hours and work assignments were changed six days after his wife spoke about eliminating the superintendent's position at a school board meeting about budgetary issues. The custodian's reassignment happened four days after the school district eliminated two part-time custodial positions that previously handled the work. The custodian resigned effective on the date his schedule was to change. He claimed that his working conditions were "uniquely intolerable," in part because his new assignment required outdoor work and he was severely allergic to bee stings, although his doctor never recommended excusing the custodian from performing any outdoor duties.

The custodian filed suit against the employer and others alleging he was constructively discharged because of his association with his wife in violation of 42 U.S.C. § 1983; the Minnesota Human Rights Act (MHRA), Minn. Stat. §363A.08; and state tort law. The district court granted summary judgment to the employer, holding that the custodian failed to show sufficient evidence that his association with his wife was a substantial or motivating factor in his alleged constructive discharge or that the employer's proffered reason for his reassignment (i.e., that it eliminated the positions which previously performed the work) was pretext. The Eighth Circuit Court of Appeals affirmed in the case, *Skalsky v. Ind't Sch. Dist. No. 743*, No 13-3605 (8th Cir. Nov. 28, 2014), stating that the employer "[reassigned him to a position for which he was well qualified as part of a plan to address ongoing financial difficulties.](#)"

Employers should take care in changing working conditions or taking other potentially adverse actions shortly after the employee has engaged in arguably protected activity and always ensure that the reasons for such action are carefully documented.

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