

## Court: Man entitled to workers' comp

■ Rapid City man suffered three back injuries while working for the school district.

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The Associated Press

PIERRE — A Rapid City man who suffered three back injuries while working for the Rapid City School District is entitled to workers' compensation benefits as a totally and permanently disabled worker, the South Dakota Supreme Court ruled Thursday.

The high court's unanimous opinion overturned the state Labor Department's decision to deny benefits to Bernard Eite, 58, who moved to the Rapid

City area from England in 1985.

Eite sought workers' compensation insurance benefits as a totally and permanently disabled worker after his third back injury. The school district had tried to shift Eite to a job as a classroom teacher's assistant, but that did not work out because he has difficulty reading and writing.

The Supreme Court said the Labor Department was wrong to find that Eite had not made a reasonable search for other jobs. The school district also failed to show that suitable jobs were available to Eite in the area, the justices said.

Eite's lawyer, James Leach of Rapid City, said the decision means Eite will receive benefits, and further proceedings will be held to calculate the

amount of those benefits.

"I'm beyond ecstatic," Leach said of the high court's ruling. "It's been a nightmare for Bernard. This is great vindication for him."

Eite began working for the Rapid City School District as a custodian in 1989. He injured his back in 1993 when he fell on ice outside a school, in 1996 when he was lifting a box, and in 2001 when he again fell on some ice.

The district twice tried to shift Eite to work as an instructional assistant in classrooms, but he was unable to help students with their work because he could not read or write at a sufficient level, according to court documents.

Eite had two surgeries on his back, and doctors eventually

determined that he was limited to lifting a maximum of 20 pounds and should restrict other physical activities.

After Eite sought permanent workers' compensation benefits in 2003, the Labor Department ruled that he had failed to prove he was entitled to those benefits. The department found Eite had misrepresented his physical capabilities to doctors, there was a lack of medical evidence to support his disability claim, and his testimony lacked credibility.

A surveillance video made by a private investigator hired by the school district showed Eite camping and boating with his family over a four-day period. He climbed in and out of a boat, lifted some items and displayed relatively normal motion, according to court records.

The Labor Department ruled Eite did not show he was entitled to workers' compensation benefits because he failed to conduct a reasonable, good-faith search for a job.

A rehabilitation counselor testified that he believed Eite's job search was not reasonable because Eite did not fill out job applications when positions had already been filled. But the Supreme Court said Eite's employment search was reasonable because he followed up on every job lead and took other steps to seek a job.

The Supreme Court also rejected the Labor Department's finding that the school district had showed suitable work was available in the area for someone with Eite's limitations.