BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building

Fourth floor Des Moines, Iowa 50319

:

THOMASD LEWIS

HEARING NUMBER: 09B-UI-02910

Claimant,

.

and : **EMPLOYMENT APPEAL BOARD**

DECISION

WELLMAN DYNAMICS INC

Employer.

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: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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 Rea	asoning and
Conclusions of Law by noting that the claimant failed to refute the employer	testimony,
particularly regarding prior problems. Additionally, the claimant did not present	his medical
issue to the employer; otherwise, the employer would have offered him FMLA.	Lastly, the
record establishes that the claimant violated the union contract.	-

Elizabeth L. Seiser		

AMG/ss

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. The claimant was discharged for two days of no call/no show, which according to union contract, would warrant termination. But according to unemployment compensation law, the claimant would have to be a no call/no show for three consecutive days of unexcused absences to be disqualified for benefits.

John A. Peno	