

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TOM A GRUTZ
13205 WELLMAN RD
LAPORTE CITY IA 50651**

**MAGEE CONSTRUCTION COMPANY
1705 WATERLOO RD
CEDAR FALLS IA 50613**

**Appeal Number: 05A-UI-04755-D
OC: 03/27/05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Active Search for Work
Section 96.19-38-c – Temporary Unemployment

STATEMENT OF THE CASE:

Tom A. Grutz (claimant) appealed a representative's April 14, 2005 decision (reference 02) that informed him that he was now required to seek work as he was no longer "temporarily nemployed" after his layoff from Magee Construction Company (employer). Upon the claimant's request for an in-person hearing, hearing notices were mailed to the parties' last-known addresses of record for an in-person hearing to be held on May 15, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-04756-D. The claimant failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. The employer responded to the hearing notice through the appearance of Chris Michels at the time and place designated for the hearing.

Mr. Michels requested that the administrative law judge make a determination based upon a review of the information in the administrative file plus his informal statement. Based on a review of the information in the administrative file, Mr. Michels' informal statement, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective March 27, 2005 after a March 21, 2005 layoff from employment from the employer due to lack of work. The claimant had worked full time as a carpenter since April 3, 2002. The claimant had assumed that the layoff was only going to be temporary; the employer may not have advised him that the layoff was permanent. The employer considers the layoff to be permanent. The claimant filed weekly claims for unemployment insurance benefits each week since establishing his base claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is required to make an active search for work as of April 14, 2005 because he was not temporarily unemployed.

Iowa Code §96.19-38-c defines temporary unemployment as follows:

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The employer does not and did not have an intention to recall the claimant. He is not "temporarily" unemployed, and therefore is subject to the work search requirements.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is not exempt from the work search requirements. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated April 14, 2005 (reference 02) is affirmed. The claimant is no longer considered to be temporarily unemployed, and he is required to make an active search for work effective April 14, 2005. Benefits are allowed, if the claimant is otherwise eligible.

ld/s