

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

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WIESE INDUSTRIES INC.
1501 - 5TH ST
PO BOX 39
PERRY IA 50220

Appeal Number: 06A-UI-07095-SWT
OC: 06/11/06 R: 01
Claimant: Appellant (2-R)

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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 6, 2006, reference 01, that concluded he was not available for work because he had requested and received a leave of absence. A telephone hearing was held on August 1, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Talbot participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for the employer as a welder from September 15, 1997, to October 15, 2005. The claimant sustained a work-related injury to his shoulder and chin on August 6, 2004, that has required three surgeries. The claimant had been working light duty work for the employer up until October 15, 2005, when the claimant was informed that he was off work

because the employer did not have any light-duty work available. The claimant was then off work, receiving workers' compensation benefits.

The claimant's last shoulder surgery was in March 2006. After a period of recovery, the claimant's surgeon evaluated the claimant on May 19, 2006, to determine the extent of his permanent disability. Afterward, the claimant stopped receiving workers' compensation benefits. The employer has indicated that the claimant is on layoff status subject to recall within one year if work becomes available within his permanent restrictions. The claimant has never requested a leave of absence from the employer.

The claimant has applied for work as a farmhand and an equipment sales person. He was able to perform such work and would have accepted the job if offered. The claimant could work as a welder as long as he did not have to do overhead work, which was rarely required when he worked for the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is qualified to receive unemployment insurance benefits based on the reasons for his separation from work. The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The claimant has never quit his job and was not discharged for misconduct. The employer laid the claimant off because the employer believed it did not have any work that the claimant was able to do. The claimant never requested any leave of absence from the employer. He is qualified to receive unemployment insurance benefits based on the reasons for his separation from work.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The evidence establishes the claimant is able to work, available for work, and actively seeking work.

The Agency has mistakenly classified the claimant as a claimant who is on temporary layoff and is not required to look for work or register for work. This classification is incorrect, as the employer does not expect to recall the claimant to work in the immediate future. This classification should be changed.

DECISION:

The unemployment insurance decision dated July 6, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The issue of the claimant's classification is remanded to the Agency for correction.

saw/kjw