

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

JAMES K ATKINSON
LOT 34
31100 – 653RD RD A
MAXWELL IA 50161

CUSTOM STEEL ERECTORS INC
2645 MOONLIGHT DR
DES MOINES IA 50320

Appeal Number: 05A-UI-07093-DWT
OC: 09/12/04 R: 02
Claimant: Appellant (4)

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)

871 IAC 24.1(113) – Nondisqualifying Separation

STATEMENT OF THE CASE:

James K. Atkinson (claimant) appealed a representative's July 1, 2005 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Custom Steel Erectors, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2005. The claimant participated in the hearing. Perry Sinopoli, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2001. The claimant worked as a full-time ironworker. The claimant informed the employer he had to spend some time in jail. When the claimant left his job on June 6, 2005, to serve his jail sentence, the employer still had work for him to do.

The employer's work slowed down in mid-June. The employer placed employees on a temporary layoff in mid-June. When the claimant was released from jail on July 3, he contacted the employer on July 5, 2005, to find out where he should report to work. The employer did not have any work for employees to do at that time. As soon as the employer has work for the claimant to do, the claimant will be called back to work. The employer anticipated the claimant would have been back to work before July 28, but the employer's work had not picked up as of this date.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. From June 6 to July 3, 2005, the claimant was in jail and off from work for personal reasons. The employer knew the claimant had to serve a jail sentence. The claimant did not quit as of June 6, because he planned to return to work as soon as he was released from jail. At first the owner did not realize the claimant was in jail even though the claimant told the employer about the jail sentence. Initially, the employer assumed the claimant had quit. While the claimant was voluntarily unemployed from June 6 to July 3, the claimant did not quit. Basically, the claimant was on a leave of absence. The claimant's "leave of absence" ended when he was released from jail on July 3.

When the claimant contacted the employer on July 5, the employer would have put him to work immediately if the employer had work for the claimant to do. Instead, the employer's business was slow, and even though the claimant was available to work, the employer's employees were laid off until the employer's business picked up. As of July 3, 2005, the claimant is available to work and is on a temporary layoff from work. Therefore, the claimant is qualified to receive unemployment insurance benefits as of July 3, 2005.

DECISION:

The representative's July 1, 2005 decision (reference 04) is modified in the claimant's favor. The claimant is not eligible to receive benefits from June 12 through July 3, 2005, because the claimant was voluntarily unemployed while he was on a leave of absence and in jail. As of July 3, 2005, the claimant was available to return to work but the employer's employees were at that time on a layoff. Since the employer is going to recall the claimant and the claimant plans to return to work for the employer, the claimant is on a temporary layoff and is qualified to receive unemployment insurance benefits as of July 5, 2005.

dlw/kjw