

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CLAYTON R BATCHELOR
Claimant

APPEAL NO. 07A-UI-00172-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WRS CONSTRUCTION INC
Employer

OC: 03/19/06 R: 04
Claimant: Respondent (2)

Section 96.4(3) – Able and Available
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, WRS Construction, filed an appeal from a decision dated December 28, 2006, reference 02. The decision allowed benefits to the claimant, Clayton Batchelor. After due notice was issued, a hearing was held by telephone conference call on January 23, 2007. The claimant participated on his own behalf. The employer participated by Office Manager Kayla Kraklio and President Shawn Agan.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Clayton Batchelor began employment with WRS Construction in August 2005. He filed a claim for benefits with an effective date of March 19, 2006, and an additional claim effective December 3, 2006.

The week of December 3, 2006, he worked five hours on Monday, was no-call/no-show on Tuesday and on Wednesday called President Shawn Agan and asked to take the rest of the week off for personal reasons, and the request was granted. On Friday he came in to pick up his check and asked Office Manager Kayla Kraklio if he could have the next two to three weeks off for personal reasons, and that request was granted. Work was available to him during the entire two weeks he filed for benefits. Mr. Batchelor did return to work on December 19, 2006, and did receive benefits for the two-week period from December 3 through 16, 2006.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested, and was granted, time off for personal reasons by his employer. This is considered a voluntary leave of absence and under the provisions of the above Administrative Code section, he is not eligible for benefits during that time.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 28, 2006, reference 02, is reversed. Clayton Batchelor was not able and available for work during the two-week period from December 3 through 16, 2006, and is not eligible for benefits. He is overpaid in the amount of \$271.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css