

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT M BATTEN
Claimant

APPEAL NO. 07A-UI-01110-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MFT CONSTRUCTION INC
Employer

**OC: 12/17/06 R: 01
Claimant: Appellant (4)**

Section 96.4-3 – Able to and Available for Work
Section 96.5-1-a – Quit for Other Employment

STATEMENT OF THE CASE:

Robert M. Batten (claimant) appealed a representative's January 23, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of December 8, 2006, because he requested and MFT Construction (employer) granted him a leave of absence. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2007. The claimant participated in the hearing. Kathy Lienemann, the president, and Vern Lienemann participated in the hearing. Joe Zimmermon was available to testify. 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.

ISSUES:

When was the claimant on a medical leave of absence?

Did the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 10, 1996. The claimant worked as a full-time mechanic. On December 7, 2006, the claimant went home early because he was ill. The employer learned the claimant was hospitalized on December 8, 2006. The claimant attended the employer's Christmas party on December 14, 2006. The claimant informed the employer he had a doctor's appointment the next week and hoped to be released from work.

The claimant went to his doctor and learned he could return to work. The claimant understood his doctor released him to work as of December 19, 2006. The claimant established a claim for benefits during the week of December 17, 2006.

The employer received information that the claimant's doctor released him to work on December 26, 2006. The employer's business was closed the week of Christmas, December 24 through 30, 2006. The claimant returned to work on January 2, 2007.

On January 8, the claimant informed the employer he was going to quit at the end of the week because he found a higher paying job. The claimant indicated he would work until the end of the week or that day could be his last day of work. The claimant intended to work until January 12, 2007. The employer decided January 8, 2007, would be the claimant's last day of work. The claimant started his new job on January 15, 2007.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4.3. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment and the claimant is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). The law also presumes a claimant is not able to work when he is under the care of a medical practitioner and has not been released as being able to work. 871 IAC 24.23(35).

The facts show that for a period of time the claimant was ill and unable to work. As of December 14, the claimant had not yet been released to return to work but informed the employer he had an appointment the next week and hoped to be released to work. The first time the employer understood the claimant was released to work was the week of December 24. After the claimant returned to work, on January 2, 2007, the employer asked the claimant to provide a doctor's statement verifying he had been released to work. The doctor's statement indicated the claimant had been released to work as of December 26, 2006. Although the claimant contended his doctor released him to work on December 19, the doctor's written statement does not support this assertion. The facts do not support an earlier release date. A preponderance of the evidence establishes the claimant was released to work on December 26, 2006. Therefore, the claimant is not eligible to receive benefits for the week ending December 23, 2006.

The claimant was able to and available for work during the week ending December 30, 2006. The claimant did not work this week because the employer was closed down for the holidays and no one worked this week. The claimant was on a temporary layoff the week of December 24, 2006, and is eligible to receive benefits for this week.

The claimant then worked from January 2 through 8, 2007. On January 8, the claimant gave the employer a week's notice that he was quitting because he had accepted other employment. A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits because he has accepted other employment, he is qualified to receive unemployment insurance benefits, and the employer's account will not be charged. Iowa Code § 96.5-1-a.

In this case, the claimant planned to work until January 12, 2007, but the employer decided to end his employment on January 8, 2007. When a claimant gives an employer advance notice of a resignation and the employer discharges the claimant prior to the effective date of his resignation, no disqualification shall be imposed from the last day of work until the proposed date of the resignation. 871 IAC 24.25(38). This means the claimant is eligible to receive partial benefits for the week ending January 13, 2007.

Since the claimant quit his employment because he accepted other employment, the claimant is not disqualified from receiving benefits based on this employment separation. The employer's account may be charged for benefits the claimant received for the weeks ending December 30, 2006 and January 13, 2007.

DECISION:

The representative's January 23, 2007 decision (reference 01) is modified in the claimant's favor. The claimant is not eligible to receive benefits for the week ending December 23, 2006, because he did not establish that he was released to work this week. The claimant is qualified to receive benefits for the week ending December 30, 2006, because he was able to work and available for work, but the employer shut down business this week. The claimant is eligible to receive partial benefits for the week ending January 13, 2007, because the employer did not allow the claimant to work until the effective date of his resignation, January 13, 2007. Since the claimant quit his employment because he accepted other employment, this employment separation does not disqualify him from receiving benefits. The employer's account will not be charged for any benefits the claimant may receive after January 14, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw