

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES R GUYTON**  
Claimant

**APPEAL NO: 12A-UI-06258-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**  
Employer

**OC: 07/17/11  
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

James R. Guyton (claimant) appealed a representative's May 23, 2012 decision (reference 06) that concluded he was not qualified to receive unemployment insurance benefits as of May 6, 2012, in connection with his employment with Cambridge Tempositions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2012. The claimant participated in the hearing. Victor Ochoa appeared on the employer's behalf. The hearing record was left open through June 21, 2012 for submission of Claimant's Exhibits A and B and any objection by the employer. No objection was received, and Claimant's Exhibits A and B were entered into evidence. 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:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer in 2000. His most recent assignment began on February 21, 2012, working full time as a laborer at the employer's Silvas, Illinois, business client. His last day on the assignment was May 1, 2012.

On April 30 the claimant slipped at work and injured his back. He reported this to the employer on May 1. He saw a doctor on that date, and was given a note indicating that he should be off work but could return to work on May 4. (Claimant's Exhibit A.) He informed the employer of the note, and brought it in to the employer's office on May 4, a Friday. However, he indicated that he did not feel he could work that day, but was going to go to a specialist. On Monday, May 7, the claimant was again seen by a doctor and was given a note excusing him from work until May 10; the note indicated that the claimant could return as of that date, or "[h]e may return earlier if his condition improves." (Claimant's Exhibit B.) The claimant brought that form into the employer's office on May 8. The employer indicated that the note was not an adequate release

to place the claimant in other work. No evidence was presented to indicate that after May 10 the claimant had any work restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). Being able and available is based upon the claimant's status for the major portion of the regular work week. 871 IAC 24.22(2)h.

The claimant's doctor's note indicating he was only excused through May 10 is adequate to conclude that he was released without restrictions as of that date. The claimant has demonstrated that as of May 10, he is able to work in some gainful employment. The claimant was not able and available for work for the major portion of the regular work week for the benefit week ending May 12, but was able and available for work as of May 13, 2012. Benefits are allowed as of May 13, 2012, if the claimant is otherwise eligible.

**DECISION:**

The representative's May 23, 2012 decision (reference 06) is modified in favor of the claimant. The claimant was not able to work and available for work for the benefit week ending May 12, 2012, but was able and available for work effective May 13, 2012. As of that date, the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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