

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

DEREK L BREWER
P O BOX 3452
DAVENPORT IA 52808

CAMBRIDGE TEMPOSITIONS INC
ATTENTION: MANAGER
610 – 32ND AVE SW STE A
CEDAR RAPIDS IA 52404-3910

Appeal Number: 04A-UI-01411-S2T
OC: 11/23/03 R: 04
Claimant: Respondent (2)

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 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Cambridge Tempositions (employer) appealed a representative's January 28, 2004 decision (reference 06) that concluded Derek Brewer (claimant) was eligible to receive unemployment insurance benefits as of December 12, 2003. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2004. The claimant participated personally. The employer was participated by Victor Ochoa, Account Manager, and Shelley Hoffmann, Office Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from November 14 through 25, 2003. He did sign a document indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant completed his assignment on November 25, 2003, and sought reassignment from the employer. No work was available until December 10, 2003. The employer offered the claimant a job on December 10, 2003. The claimant accepted the position but was sick and unable to work. The claimant was sick with the flu through December 18, 2003. The claimant did not seek reassignment after December 18, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was ill from December 11 through 18, 2003. He is considered to be unavailable for work from December 11 through 18, 2003. The claimant is disqualified from receiving unemployment insurance benefits from December 7 through 20, 2003, due to his unavailability for work.

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 benefits in the amount of \$430.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 28, 2004 decision (reference 06) is reversed. The claimant is not eligible to receive unemployment insurance benefits from December 7 through 20, 2003. The claimant is overpaid benefits in the amount of \$430.00.

bas/s