

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

REBECCA L VANDERMARK

Claimant,

and

BRADFORD CHILDCARE SVCS

Employer.

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HEARING NUMBER: 13B-EUCU-00472

**EMPLOYMENT APPEAL BOARD
DECISION AFTER GRANTED REHEARING**

NOTICE

THIS DECISION BECOMES FINAL unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The claimant filed an application for rehearing on the above-listed matter that was granted because the claimant indicated that she never received the Notice of Decision, which was why her appeal was untimely. Having established good cause for the late appeal, the Board reopened the matter in order to consider the merits of this matter. The Board is now ready to issue its decision.

FINDINGS OF FACT:

A hearing in the above matter was scheduled for June 1, 2011 in which the issue to be determined was whether the claimant was able and available for work. The administrative law judge's decision was issued June 3, 2011, which determined that the claimant was disqualified because she was in school and failed to establish that she was able and available for work effective January 9, 2011. She was, however, allowed benefits for the interim period July 11, 2011 through August 12, 2011.

The administrative law judge's decision has been appealed to the Employment Appeal Board in which the claimant indicates that she was on Department Approved Training (DAT). She subsequently received an overpayment decision for \$5292 (12A-UI-14140).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. Because the claimant was on DAT, she would not be required to be able and available for work, which may change the outcome of this matter. However, we do not know the time frame that in question, the Board must remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated June 3, 2011 is not vacated. This matter is remanded to the Iowa Workforce Development Center, Claims Section, for further consideration.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv