

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOREENA R BOYD**  
Claimant

**APPEAL NO. 12A-UI-02182-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**  
Employer

**OC: 11/13/11  
Claimant: Respondent (2/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Cambridge Tempositions (employer) appealed a representative's February 23, 2012 decision (reference 03) that concluded Doreena Boyd (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2012. The claimant participated personally. The employer participated by Elaine Pruett, Account Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from July 29, 2010, through November 11, 2011. The claimant filed for unemployment insurance benefits with an effective date of November 13, 2011. She became a full-time student on October 11, 2011. The claimant moved to Tennessee on December 29, 2011. She continues to be a full-time student.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is not available for work.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

When an employee is devoting time and effort to being a full-time student, she is considered to be unavailable for work. The claimant was devoting her time and efforts to being a full-time

student. She is considered to be unavailable for work after November 13, 2011. The claimant is disqualified from receiving unemployment insurance benefits beginning November 13, 2011, due to her unavailability for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's February 23, 2012 decision (reference 03) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css