

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

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LENNY K BYERS	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-11776
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
IOWA WORKFORCE DEVELOPMENT	:	

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.3(7)**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A representative issued a decision dated December 2, 2008 that concluded the Claimant was disqualified to receive benefits after a separation from employment from the Employer. The Claimant appealed that decision and in appeal 08A-UI-11775 the Administrative Law Judge affirmed based on a finding that the appeal was untimely. The Administrative Law Judge issued a separate decision in case 08A-UI-11776 finding an overpayment of \$2,044.00. The Claimant timely appealed the Administrative Law Judge's disqualification decision. In a concurrently issued decision in case 08A-UI-11775 the Board today finds the appeal to the Administrative Law Judge timely and thus reverses and remands the Administrative Law Judge's disqualification decision. The Board now in this decision reverses the overpayment decision.

**REASONING AND CONCLUSIONS OF LAW:**

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 Board concludes that the Claimant has not been overpaid unemployment insurance benefits in the amount of \$2,044.00 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been reversed.

**DECISION:**

The administrative law judge's decision dated January 2, 2009 is **REVERSED**. The Employment Appeal Board concludes, at this time, that the Claimant was not overpaid benefits. If, on remand in the disqualification case, the Administrative Law Judge concludes that the Claimant should be disqualified then a new overpayment may be imposed at that time.

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John A. Peno

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Elizabeth L. Seiser

RRA/fnv