

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
Website: eab.iowa.gov**

STEVEN A GILROY

Claimant

: **APPEAL NUMBER:** 23B-UI-08793

: **ALJ HEARING NUMBER:** 23A-UI-08793

:

and

:

**EMPLOYMENT APPEAL BOARD
DECISION**

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AMERICAN BAPTIST HOME OF THE MID :

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Employer

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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: 96.5-2 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

FINDINGS OF FACT:

The administrative law judge's findings of fact are adopted by the Board as its own with the exception of the final paragraph. The Board makes the following additional findings.

The Claimant was paid \$1,653 in regular state unemployment since the filing effective date. The Employer witness did not participate in the fact-finding interview because she did not receive notice of the fact-finding interview. However, she is not the one who gets the mail and acknowledged the lack of notice was reasonably due to the Employer's mail processing.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter we make clear that the Claimant was disqualified base don the separation from employment, and that the **disqualification decision still stands**. The Board adopts as its own all of the administrative law judge's conclusions of law except for the last paragraph. In lieu of the last paragraph the Board makes the following Reasoning and Conclusions of Law.

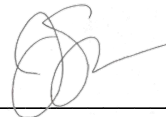
In this case, the Claimant has received benefits but was not eligible for those benefits. Since the Employer did **not** participate in the fact-finding interview, the Claimant is **not** obligated to repay to the agency the benefits he received and the Employer's account **shall be charged**.

Finally, the claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

DECISION:

The administrative law judge's decision dated October 6, 2023, is **AFFIRMED ON THE ISSUE OF DISQUALIFICATION FROM BENEFITS**. We affirm the decision that the Claimant was discharged from employment due to job-related misconduct. As a result, benefits are withheld until such time as the Claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The administrative law judge's decision dated October 6, 2022 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The overpayment caused by the decision of the administrative law judge (\$1,653) is **not** chargeable to the Claimant but rather is **chargeable to the Employer**. The Claimant is relieved of the responsibility to pay back the overpayment caused by the administrative law judge's reversal of the allowance of benefits, and the Employer's account is subject to be charged for these overpaid benefits.



James M. Strohman



Myron R. Linn

SRC/fnv

DATED AND MAILED: NOV 17 2023