

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

CHAD L DRUMBARGER

Claimant,

and

L A LEASING INC

Employer.

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HEARING NUMBER: 14B-UI-05884

**EMPLOYMENT APPEAL BOARD
DECISION**

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: 96.5-1-J, 96.3-7

DECISION

The Employer appealed the issue of the chargeability of the overpayment in this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision on the **chargeability** of the overpayment. The Employment Appeal Board **REVERSES** on the overpayment chargeability issue as set forth below.

As a result the Claimant is still not eligible for benefits but now will also be responsible for paying back the overpayment.

FINDINGS OF FACT:

The Administrative Law Judge findings of fact are adopted by the Board as its own with the exception of the findings in the last paragraph of the findings of fact. In lieu of this paragraph the Board makes the following findings of fact.

The Claimant filed for unemployment insurance benefits with an effective date of July 21, 2013. He claimed for benefits after the separation from employment. On May 23, 2014, the Employer told the fact finder that it would "no longer be participating in fact finding's via telephone". That same communication gave the phone numbers of two persons to call "for rebuttal." The Employer provided documents for the fact-finding interview on May 29, 2014. Those documents included a separation form which set out that the Claimant quit, stated that the Claimant did not check in for work within three days, and gave the last day

on the assignment, that is, the date of the quit. The fax cover that came with this form gave the name and phone number of two contact persons who could be contacted if necessary for rebuttal. These persons had knowledge of the reasons for the Claimant's separation, and could have brought the on-site manager, Ms. Hutchinson, into the call if additional evidence had been needed. The Employer also supplied copies of the company "availability statement" that requires requesting reassignment in three days. The policy reflects that two copies had been made of the signed policy with the yellow copy to be retained by the Claimant. The fact finder had the supplied names and phone numbers available, but made no call.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter we make clear that the Claimant was disqualified based on the separation from employment, and that that disqualification decision still stands.

The Employer appealed to the Board the Administrative Law Judge's determination to charge the Employer for the overpayment based on the Administrative Law Judge's decision that the Employer failed to participate in fact finding. The regulations, cited by the Administrative Law Judge, set out the standard for determining participation:

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer.If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including....in the event of a voluntary separation, the stated reason for the quit....

871 IAC 24.10(1). If the Employer met this standard of participation then the Claimant has to pay back the overpayment. Otherwise the Employer's account is chargeable for this amount and the Claimant is relieved of having to pay it back.

As the quoted regulation makes clear in a quit case the Employer must "[a]t a minimum...identify the dates and particular circumstances, including...the stated reason for the quit." 871 IAC 24.10(1). What the Employer submitted was sufficient to meet this standard. We once again caution this particular employer that in a termination case, where the Employer has the burden, this likely would not have been sufficient. But in this quit case, under the specialized "j rule," the Employer gave the date of the quit (the last day of the assignment) and the stated reason for the quit, that is, that the Claimant failed to request reassignment within three days. The Employer also supplied the signed reassignment policy which on its face indicates that a copy is given to workers to keep. The fax cover specifically listed two persons to call for rebuttal. Since the Employer gave the name and number of employees to contact with questions this was sufficient to meet the requirement of giving the contact information for an employee "who may be contacted, if necessary, for rebuttal." 871 IAC 24.10(1).

The Administrative Law Judge opines that the persons listed do not have personal knowledge of the circumstances of the Claimant's assignment and that it was mere boilerplate. But the people listed coordinate for the Employer and could make the necessary people available had they been called – and they were not. This is contact information sufficient to satisfy the purpose of the rule. Specifically, in the circumstances of this case, we find that the temporary staffing firm can supply the contact information of the coordinator who can route the fact finder to the necessary personnel. And boilerplate or not those experienced workers are available to take the call. At fact finding the practice even allows leaving a message and calling back with the information. We certainly would not think it a failure to participate to give a general number to the fact finder and require the fact finder to tell a receptionist whom the call is for, rather than give the fact finder that person's direct line. There is no difference here except in the title of the employee who would be getting Ms. Hutchinson on the line. In short, the fact finder had a number to call that would get in touch with Ms. Hutchinson, even if not her direct line. The Employer has satisfied the requirement of participation set out by regulation. The Employer is relieved of charges for the overpayment. The Claimant will be charged the overpayment.

DECISION:

The administrative law judge's decision dated July 18, 2014 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The overpayment entered in the amount of \$2,610 is chargeable to the Claimant and not to the Employer's account.

Kim D. Schmett

Ashley R. Koopmans