

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

JACQUELINE R GRIFFITH

Claimant

and

PILOT TRAVEL CENTERS LLC

Employer

HEARING NUMBER: 17BUI-07432

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

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-A, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed to the Employment Appeal Board the issue of her disqualification from benefits and also on the issue of chargeability of the overpayment in this case. The members of the Employment Appeal Board reviewed the entire record. On the question of whether the Claimant was disqualified from benefits the Appeal Board finds the administrative law judge's decision is correct. The Employment Appeal Board **AFFIRMS** on the Claimant's **disqualification** from benefits.

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 **not** be responsible for paying back the overpayment. We find that the overpayment must be charged to the Employer rather than to the Claimant.

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 sentence. In lieu of the final sentence of the findings of fact, the Board makes the following findings.

The fact finding conference in this matter was held on July 12, 2017. Prior to fact finding the Employer sent in a protest that included documents and the names of a person to be called for rebuttal. This person was not available when called, and the Employer did not call back in response to the message left by Workforce. The Workforce Advisor indicated that the Employer did not satisfy the conditions of participation.

The agency records reveal that the Claimant was paid \$911 during the weeks ending 6/24/17 through 7/08/17 and the week ending 7/22/17. She received no other benefits before being disqualified by the Administrative Law Judge's decision, which disqualification we affirm today.

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 **the disqualification decision still stands**. The Board thus adopts as its own all of the Administrative Law Judge's conclusions of law except for the last two sentences. In lieu of these sentences, the Board makes the following Reasoning and Conclusions of Law.

The regulation provides that "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." 871 IAC 24.10(1). The Employer provided the phone number of a third party representative who would not normally have firsthand knowledge. While this may be enough if the third party administrator has ready access to a person with firsthand knowledge, the third party administrator here did not return a call when actually contacted for rebuttal. Under these circumstances we cannot find that the Employer satisfied the requirements of the participation rule.

We also, as an alternative ruling on disqualification, would disqualify the Claimant for quitting without good cause attributable to the Employer if we analyzed the separation as a quit. Quitting in response to a reprimand is not good cause, at least where the facts show that the reprimand was justified, as here. 871 IAC 24.25(28).

DECISION:

The administrative law judge's decision dated August 9, 2017 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 her weekly benefit amount, provided she is otherwise eligible.

The administrative law judge's decision dated August 9, 2017 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The overpayment entered in the amount of \$911.00 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 of \$911.00, and the Employer's account is subject to be charged for these overpaid benefits.

The Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is

not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by Claimant was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv