

We also correct the Administrative Law Judge's findings as follows:

In addition, we find that the Employer was called by the fact finder at the number given, but was directed to use the documents submitted in lieu of the Employer's participation.

REASONING AND CONCLUSIONS OF LAW:

The Board adopts the administrative law judge's Reasoning and Conclusions of Law with the following modification by deleting the last paragraph on p. 5, and replacing it as follows:

~~The documentation the Employer submitted for the fact finding interview was sufficient, if un rebutted, to prove misconduct in connection with the employment and satisfied the participation requirement. In addition, Mr. Bell provided an intentionally misleading statement to the deputy at the time of the fact-finding interview. Accordingly, Mr. Bell is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.~~

The Board, one member dissenting, concludes the Employer's submission of documents in lieu of participation was **not** sufficient to prove job-related misconduct and does **not** satisfy the participation requirement. In accordance with Iowa law, unless fraud or misrepresentation is shown, "benefits shall not be recovered" from a Claimant if the Employer does not participate in fact-finding interview.

Iowa Code 96.3(7)"b"(1)(a) provides in relevant part:

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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits.* This prohibition against relief of charges shall apply to both contributory and reimbursable employers. (Emphasis added.)

DECISION:

The administrative law judge's decision dated December 26, 2018 is **AFFIRMED ON THE ISSUE OF DISQUALIFICATION FROM BENEFITS**. We affirmed 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.

However, this matter is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The Claimant is relieved of responsibility to pay back the \$3,027.00 overpayment, and the Employer's account shall now be charged for those overpaid benefits due to its nonparticipation in the fact-finding interview.

Ashley R. Koopmans

James M. Strohman

CONCURRING, IN PART, and DISSENTING, IN PART, OPINION OF KIM D. SCHMETT:

I agree with my fellow board members that the administrative law judge's decision should be affirmed as to the disqualification, with modification. However, I would disagree with the reversal on the overpayment issue, and would affirm the administrative law judge's decision as to the Employer's participation and overpayment chargeability.

Kim D. Schmett

AMG/fnv