

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

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**CURTIS L KEMP**

Claimant,

and

**L A LEASING INC**

Employer.

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**HEARING NUMBER: 14B-UI-13750**

**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, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed the issue of whether he is disqualified for benefits to the Employment Appeal Board. 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 affirms the Administrative Law Judge on the issue of the Claimant's inability to draw benefits, based on the reasons set out by the Administrative Law Judge. The Appeal Board finds it cannot affirm the administrative law judge's decision on the chargeability of the overpayment. The Employment Appeal Board **AFFIRMS the denial of benefits** but **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 November 3, 2013. He claimed for benefits after the separation from employment. On December 3, 2013, the Employer told the fact finder that it would "no longer be participating in fact finding's via telephone". The employer provided

documents at the fact-finding interview on December 3, 2013. Those documents included a separation form which set out that the Claimant quit by leaving and not coming back, stated that the Employer attempted to contact the Claimant but could not because phone numbers were not working, 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 in the on-site manager, Mr. Cole, into the call if additional evidence had been needed. We note that at hearing the much important evidence was based on information contained in the Employer's computer records. The fact finder had the supplied names and phone numbers available, but made no call.

## **REASONING AND CONCLUSIONS OF LAW:**

The first five paragraphs of the Administrative Law Judge's Reasoning and Conclusions of Law are adopted by the Board as its own, but the remainder of the Administrative Law Judge's Reasoning and Conclusions of Law are not adopted. In lieu of the paragraphs not being adopted the Board makes the following findings of fact.

As an initial matter we make clear that the Administrative Law Judge disqualified the Claimant in her decision, and that that disqualification decision is affirmed by adopting the Administrative Law Judge findings of fact, and the conclusions of law relating to the issue of the Claimant's ability to get benefits, as our own. As a result the Claimant is denied benefits until requalified by earning ten times his benefit amount, provided he is otherwise eligible, as set out by the Administrative Law Judge and for the reasons given by the Administrative Law Judge.

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 the Employer gave the date of the quit and the stated reason for the quit, at least as much as the Employer knew about the stated reason. Since the Employer gave the name and number of an employee 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 person listed does not have personal knowledge of the circumstances of the Claimant’s assignment. But that person is a coordinator with the Employer who could make the necessary people available had she been called – and she was 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. 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 Mr. Cole on the line. In short, the fact finder had a number to call that would get in touch with Mr. Cole, even if not his 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, the amount of which will be determined by claims based on our remand.

#### **DECISION:**

The administrative law judge’s decision dated January 15, 2014 is **AFFIRMED ON THE DENIAL OF BENEFITS, and REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING.**

As a result the Claimant is still **not** eligible for benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant’s weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)(a). **In addition, the Claimant will be responsible for paying back** the overpayment.

The issue of the amount of the overpayment is **REMANDED** to the Claims Bureau for determination, if not already determined, and whatever that overpayment amount is it will be chargeable to the Claimant and not to the Employer’s account. An appeal of that claims determination will only be on the amount of the overpayment, not on chargeability. Our decision today is the final agency action on both the issue of the Claimant’s inability to draw benefits until requalified, and on the charging to the Claimant of any overpayment that may be assessed as a result of today’s disqualification.

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Monique F. Kuester

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Cloyd (Robby) Robinson