

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JACOB C KNAPP  
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IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

HY-VEE INC  
c/o TALX UC EXPRESS  
3977 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 05A-UI-03032-LT  
OC: 04-04-05 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code §96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 11, 2005, reference 06, decision that found the claimant overpaid benefits based upon a separation date of January 9, 2005. After due notice was issued, a hearing was held on April 11, 2005. Claimant did participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time meat clerk from September 20, 2004 through January 24, 2005 when he was discharged. During the week ending January 15, 2005, claimant reported partial wages of \$217.00 and was paid partial benefits of \$206.00. When the separation decision was issued, IWD unilaterally backdated the separation to January 9, 2005 when both parties agreed the actual separation took place on January 24, 2005. Claimant does not dispute the

separation disqualification and has not filed a claim for benefits since the week ending January 15, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

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 administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$206.00 pursuant to Iowa Code §96.3(7) as the disqualification decision that created the overpayment decision has now been modified without change in effect to show a separation date of January 24, 2005 rather than January 5, 2005.

#### DECISION:

The March 11, 2005, reference 06, decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$206.00. Hy-Vee is not a base period employer and will not be chargeable for the benefits paid during the week ending January 15, 2005.

dml/pjs