

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321  
Website: eab.iowa.gov**

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**TYLER J MCCLAIN**

Claimant

and

**AMAZON.COM SVCS INC**

Employer

: **APPEAL NUMBER:** 24B-UI-10349

: **ALJ HEARING NUMBER:** 23A-UI-10349

:

: **EMPLOYMENT APPEAL BOARD**

:

**DECISION**

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**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:** 24.10

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed the issue of the chargeability of the overpayment in this case to the Employment Appeal Board. The Claimant did not appeal the disqualification. The 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, which was the only issue before the Board.

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 Claimant filed a claim with an original claim date of October 1, 2023 following his separation from employment at Amazon. Prior to issuing an initial decision concerning benefits the Benefits Bureau of Iowa Workforce held a fact-finding conference. The Claimant participated in this conference. Through the electronic SIDES system, which is the electronic means by which an Employer protests a claim for benefits, the Employer supplied a narrative of the reasons of the Claimant's separation, and the policies that the

Claimant's actions violated. Further the Employer attached documentation to this protest to be considered by IWD, and this included the applicable policies. The Employer further faxed information, including a narrative and the discharge paperwork, to 515-242-0498 on October 17, 2023 for the October 18 fact finding conference. The fact finder relied on the written information supplied by the employer, and still concluded that benefits should be allowed. The Employer had supplied a contact number as well, but had indicated in its protest that it wanted to rely on its written submission. No attempt to contact the Employer was made at fact finding. The fact-finding process resulted in an allowance of benefits.

## REASONING AND CONCLUSIONS OF LAW:

As an initial matter we make clear that the Administrative Law Judge's decision disqualified the Claimant, and that this disqualification decision is not addressed in today's decision. The disqualification decision was never appealed to the Board, and so remains in effect.

Iowa Code §96.3(7) states

(a) 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.

b.(1)(a) 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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

b.(1) (b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits **shall not be recovered from an individual if the employer did not participate** in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

b. (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101

The rules of the Department provide:

“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. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. 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 case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy.** In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer’s representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

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.

We emphasize that at fact finding the Employer need only supply information which “if unrebutted would be sufficient to result in a decision favorable to the employer.” We thus will assess the fact-finding process against this standard. We do not, at this point, decide what actually happened that caused the Claimant to be discharged, and whether this constituted misconduct. We only decide whether the information that the

Employer supplied at fact finding, if believed and unrebutted, was sufficient to support a fact-finding determination that the Claimant was disqualified for being discharged for misconduct. We also note that the purpose of relieving a claimant of the obligation to pay back an overpayment is to encourage the participation of employers, and employer representatives, at the fact-finding process. Benefit accuracy (*i.e.* getting it right from the get-go) is enhanced if the agency has the input of *both* parties at fact finding in separation cases. The charging of any overpayment caused by an inaccurate allowance at fact-finding is an incentive to obtain employer participation. It is a sanction against failure to participate. It is not about giving a windfall to a claimant who should not have gotten benefits. *C.f.* Iowa Code §96.3(7)(a). Such a windfall is just a side-effect of charging the employer for not participating.

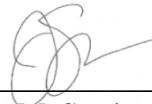
The fact-finding information shows that the Employer stated “claimant had left the building multiple times and remained clocked in. these times did not represent times that claimant was performing work actively. This totals to 419 minutes. We conducted a seek-to-understand conversation with claimant. [C]laimant stated they went outside to gain privacy in order to take important phone calls. [C]laimant did not provide any justifiable barriers to having punches for a time that claimant was not physically at work.” Employer also stated “Claimant's actions were a violation of Amazon's Standards of Conduct policy ‘Leaving company premises without permission during assigned work hours, or Falsification of personnel or other company documents/records’ which resulted in termination...Claimant admitted to the infraction, claimant stated they went outside to gain privacy in order to take important phone calls. claimant did not provide any justifiable barriers to having punches for a time that claimant was not physically at work ...The delay between the final incident and the separation date was due to investigations and approvals of the termination.” The Employer also supplied a copy of the standards of conduct policy that it alleged was violated. The Employer also faxed in the termination paperwork that stated the same reasons for the discharge.

As the quoted regulation makes clear in a discharge case the Employer can meet the participation requirement by supplying written information that sets out “dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant” as well as the policy involved. The Employer did all this and we find that it has met the participation requirement. Thus the Claimant, not the Employer, is charged for any overpayment under the statute.

Finally, we point out to the Claimant that since he is not guilty of misrepresentation, IWD’s option for collection are limited by regulation. IWD can recover from future unemployment benefits, it can recover from an income tax refund, a federal income tax refund, a lottery prize, or a vendor payment. 871 IAC 21.1(1)(b); 871 IAC 25.8(1); 871 IAC 25.16; Iowa Code §8A.504. This means that the Department will, by regulation send demand letters, and seek to work out a repayment plan, but can generally only intercept future benefits, vendor payments, and tax refunds. 871 IAC 25.8(1). Remedies like a lien are reserved for misrepresentation cases, which this is not. 871 IAC 25.8(2)(b); Iowa Code §96.14(3).

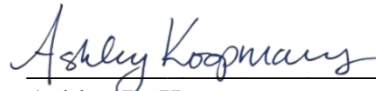
**DECISION:**

The administrative law judge's decision dated December 6, 2023 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The overpayment entered in the amount of \$2,919 is chargeable to the Claimant and not to the Employer's account. The Claimant **remains disqualified** on the terms set out by the Administrative Law Judge as that decision was not appealed to the Board.



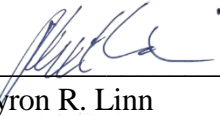
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James M. Strohman



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Ashley R. Koopmans



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Myron R. Linn

RRA/fnv

**DATED AND MAILED: JAN 19 2024**