

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

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KATHY L MAXWELL	:	
	:	
Claimant,	:	HEARING NUMBER: 08B-UI-04607
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
IOWA WORKFORCE DEVELOPMENT	:	

**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: 96.3-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A representative issued a decision dated May 7, 2008 that concluded the Claimant was denied benefits after a separation from employment from Tyson Fresh Meats, Inc. (Employer). The Claimant timely appealed that decision and in appeal 08A-UI-04606 the Administrative Law Judge affirmed. The Administrative Law Judge issued a separate decision in case 08A-UI-04607 finding an overpayment of \$5,964.00. The Claimant timely appealed the Administrative Law Judge's denial of benefits and in a concurrently issued decision in case 08A-UI-04606 the Board today reverses the Administrative Law Judge's denial of benefits. The Board now in this decision reverses the overpayment decision.

**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 Board concludes that the Claimant has not been overpaid unemployment insurance benefits in the amount of \$5,964.00 pursuant to Iowa Code section 96.3-7 as the decision denying benefits that created the overpayment decision has now been reversed. Under the law the Employer's account may not be charged with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for other job).

**DECISION:**

The administrative law judge's decision dated May 30, 2008 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not overpaid benefits.

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John A. Peno

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Elizabeth L. Seiser

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Monique Kuester