

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

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**KERRY WOODRUFF**

Claimant

and

**TYSON FRESH MEATS INC**

Employer

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**HEARING NUMBER: 16B-UI-04202**

**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:** 96.5-2-A, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member concurring, finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**, in part, and **REVERSED**, in part.

**FINDINGS OF FACT:**

The Employer provided a telephone number where they could be reached for the Fact-finding Interview scheduled for March 29, 2016. The Employer also provided documentation to be considered at the Fact-finding Interview. The Claims Representative attempted to contact the Employer twice; the last call was answered in which the Employer indicated that they waived their right to participate in the Fact-finding Interview.

## REASONING AND CONCLUSIONS OF LAW:

### 871 IAC 24.10 (1) provides:

*Employer and employer representative participation in fact-finding interviews.* “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 un rebutted 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.

The Board finds that the Employer did not submit documentation sufficient in “...detailed written statements or documents ... [providing] detailed factual information of the events leading to separation...” such that would suffice in lieu of their actual participation. In addition, the Employer waived their right to participate in the Fact-finding Interview. For these reasons, we conclude that the Employer has failed to satisfy the participation requirement set forth in the above-mentioned administrative rule.

### DECISION:

The administrative law judge's decision dated May 5, 2016 is **AFFIRMED**, as to the merits, and **REVERSED**, as to the overpayment portion of the decision. The Employment Appeal Board concludes that the Claimant is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)’a”. As for the benefits he has already received for which he was subsequently disqualified, the Claimant is under no obligation to repay the resulting overpayment.

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Ashley R. Koopmans

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James M. Strohman

**CONCURRING 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 merits of this case. However, I disagree with reversing the overpayment. I would conclude that the Employer's documentation satisfied the participation requirement and its account should not be charged. Claimant is obligated to repay the Agency the benefits he received.

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Kim D. Schmett

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv