

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

CODY L KUBITZ

Claimant

and

AGRI STAR MEAT & POULTRY LLC

Employer

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HEARING NUMBER: 22B-UI-01346

**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, 96.5-2-A

DECISION

The Employer 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 on the chargeability of the overpayment. The Employment Appeal Board **REVERSES** on the overpayment **chargeability** issue as set forth below:

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own with the exception of the final sentence, which we modify as follows:

The record shows the Employer participated in the Fact-finding during which time the Employer provided evidence of the dates the Claimant was a no call/no show.

In addition, the issue of the Claimant's disqualification was never appealed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code 871.24(10) provides:

Employer and employer representative participation in fact-finding interviews.

(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. 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.

In the instant case, the Employer did participate in Fact-finding Interview. The Employer provided the dates in which the Claimant had repeatedly failed to call in his absences, which led to his separation and subsequent disqualification. Because the Claimant never appealed the disqualification matter, that portion of the decision **the disqualification decision still stands**, as the Claimant did not appeal that decision. The Board thus adopts as its own all of the Administrative Law Judge's conclusions of law with the exception of the final sentence, and replaces said sentence with the following:

The Claimant has been overpaid unemployment insurance benefits and is **now** obligated to repay the agency those benefits. The employer's account shall **not** be charged based on their participation in the Fact-finding Interview.

DECISION:

The administrative law judge's decision dated March 3, 2022 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING**. The Employer is relieved of charges, as the Claimant is responsible for the overpayment created by the initial disqualification. This matter shall be sent to the Benefits Bureau for a calculation of the overpayment amount.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv