

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

ROSA M BORBOA

Claimant

and

LOFFREDO GARDENS INC

Employer

HEARING NUMBER: 17BUI-01504

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held March 2, 2017. The administrative law judge's decision was issued March 17, 2017. The Claimant appealed the administrative law judge's decision to the Employment Appeal Board. The Board, however, is unable to make a decision as to the merits of this case based on illegibility of the exhibit, and a failure to address issues related to the employer's policies on reporting during extended absences. Further issues regarding approval of the absences at issue appear.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2017) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Here the record contains a Xerox of a physician's note. The key issue in the case is whether this note excuses the Claimant for two specific dates or for the period starting and ending on those dates. There may be a transverse (dash) from the starting date that would normally indicate a period, not two days. But the

exhibit is a Xerox and because of safety features on the physician’s pad it is nearly illegible. We can barely read it, and would essentially have to guess at whether there is a transverse present. We thus remand for a better copy of the exhibit – we suggest either the original or a digital photograph of the original in lieu of a Xerox. Further if the note describes a period, we need to know at least whether the Claimant was told she was excused for this period, and what the Employer’s policies are for calling in during an extended absence.

The administrative law judge has an affirmative duty to develop the record. See, *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996); 871 IAC 26.14(2)(“The presiding officer shall inquire fully into the factual matters at issue...”). Since the record of the hearing before the administrative law judge is incomplete, the Employment Appeal Board cannot make a decision on the merits. For this reason, this matter must be remanded for a hearing on the issues of (1) what does the physician’s note actually say – preferably this issue is resolved with a legible copy of the note and (2) whether the Claimant was excused for a period set out in the note, and (3) what are the Employer’s policies concerning the obligation to call in while on an extended leave. Of course, any other issue relevant to possible disqualification based on the nature of separation from work may also be addressed assuming the parties have adequate notice.

DECISION:

The decision of the administrative law judge dated March 17, 2017 is not vacated at this time and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section for the limited purpose of reopening the record and eliciting additional testimony that is consistent with the Board’s concerns set forth in this decision’s Reasoning and Conclusions of Law. The administrative law judge shall conduct this supplemental hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman