

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

BRANDON E MONTELONGO

Claimant

and

PERSONNEL STAFFING GROUP LLC

Employer

HEARING NUMBER: 19BUI-00861

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for February 13, 2019 in which the issues to be determined were whether the claimant was able and available for work; whether the Claimant was eligible to receive partial benefits; and whether the Claimant was still employed at the same hours and wages. An additional issue to be addressed was whether the Employer's account can be relieved of charges.

At the hearing, both parties indicated the Claimant worked for Iowa Demolition during 2018 via assignment from DES Staffing. The Claimant also indicated he worked for Iowa Demolition off assignment; and according to the Employer, Personnel Staffing, he returned on assignment in December of 2018, but was unsure how he was assigned there. The Claimant's wage history shows no wage credits for the fourth quarter of 2018 from DES Staffing, Iowa Demolition, or Personnel Staffing Group, the Employer who participated in the hearing.

The administrative law judge's decision was issued February 21, 2019, which determined that the Claimant was disqualified for benefits because he was not partially unemployed. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) 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.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. It is unclear who the Claimant was actually working for at the time he filed for unemployment benefits. Neither is it clear who the Claimant worked for in his base period, and which Employers were in the fourth quarter of his benefit year since the testimony is inconsistent with agency records.

As the Iowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Since we do not know the answers to these questions, the Board must remand this matter for clarification of which Employer the Claimant was no longer partially unemployed with; and which Employer he was working for when he filed for unemployment benefits.

DECISION:

The decision of the administrative law judge dated February 21, 2019 is not vacated 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 Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv