

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

LARRY W LARGE

Claimant,

and

DILLON AUTO SALES INC

Employer.

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HEARING NUMBER: 14B-UI-05119

**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 scheduled for June 5, 2014 in which the issues to be determined were whether the separation was a layoff, discharge for misconduct or voluntary quit without good cause; and whether the claimant was overpaid benefits. Other issues to be addressed were should the Claimant repay benefits and/or should the Employer be charged due to Employer participation in Fact-finding Interview.

The Claimant did not appear at the hearing; however, the Claimant called in after the hearing concluded indicating that he had, in fact, provided a telephone number online to be called for his participation. While the hearing was in session, the Claimant was at Iowa Workforce Development Center to attend an unemployment class pending receipt of the administrative law judge's call. When he didn't receive the call, he questioned Workforce personnel who suggested he contact the administrative law judge, which he did.

The administrative law judge's decision was issued June 6, 2014, which determined that the Claimant was ineligible for benefits because he was discharged from work for misconduct. That decision also concluded that since the Employer did not participate in the Fact-finding Interview, the Claimant was not obligated to repay the benefits he had thus far received, and the Employer's account shall be charged. 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) (2011) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a 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 Claimant did not participate through no fault of the Claimant. In his late call, the Claimant indicated that he complied with the notice instructions that he found online to provide his telephone number. As soon as it was evident he didn't receive the call, he immediately sought assistance with Workforce personnel who directed him to contact the number on the notice instructions he received in the mail. His efforts, however, were too late to allow him to intervene during the hearing. It is clear that the Claimant intended to follow through with the appeal process. For this reason, the Board shall remand this matter for a new hearing so that the Claimant may avail himself of his due process right to a hearing. Additionally, the administrative law judge shall take testimony from the Employer regarding whether he participated in the Fact-finding Interview.

DECISION:

The decision of the administrative law judge dated June 6, 2014 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau for further action consistent with this decision. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights

Kim D. Schmett

Cloyd (Robby) Robinson

Ashley R. Koopmans

AMG/fnv