

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
Website: eab.iowa.gov**

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**BRIAN J BOSTON**

Claimant

and

**TEMP ASSOCIATES - IOWA INC**

Employer

: **APPEAL NUMBER:** 23B-UI-03827

: **ALJ HEARING NUMBER:** 23A-UI-03827

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: **EMPLOYMENT APPEAL BOARD  
DECISION**

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**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, 96.5-1J

**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 the administrative law judge's decision is correct. With the following modification, 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** regarding the separation from employment, and **REMANDED IN PART** regarding the issue of whether the Claimant is able to and available for work for further development of the record:

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for May 5, 2023, in which the issues to be determined were whether the Claimant was laid off; discharged for misconduct or voluntarily left for good cause attributable to the Employer; and whether the Claimant was able to and available for work.

The Appeal Board finds the administrative law judge's decision in regard to the separation from employment with this Employer is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own.

During the hearing, testimony was taken on whether the Claimant was able to and available for work in a manufacturing environment provided by this Employer. However, as the Claimant left the assignment and was considered to be involuntarily separated from employment, further information is needed to determine what other skills and prior work experience the Claimant possesses that could lead to full-time employment with his current medical restrictions to determine if he is able to and available for work.

**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. 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.

**DECISION:**

The decision of the administrative law judge dated May 9, 2023, is **AFFIRMED** in part and **REMANDED** in part. The administrative law judge's decision related to the separation is affirmed. The decision related to the issue of whether the Claimant is able to and available for work 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 who shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

Please note the way you appear at the hearing has changed. When you receive the Notice of Hearing, please read and follow the instructions carefully.

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James M. Strohman

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Ashley R. Koopmans

SRC/fnv

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Myron R. Linn