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

:

KIMBERLEE J ORION

HEARING NUMBER: 10B-UI-15516

Claimant,

.

and : EM

EMPLOYMENT APPEAL BOARD

DECISION

MARIE HOLLINGER

Employer.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was held November 17, 2009. The administrative law judge's decision was issued December 15, 2009, which determined that the claimant was not able and available for work prior to September 23, 2009, and was not eligible for benefits for the period of August 30, 2009 through September 26, 2009. That decision also determined that the claimant was able and available, unless otherwise eligible, beginning September 27, 2009. No determination was made as to whether the claimant was separated; however, the matter was remanded to Iowa Workforce Development Center, Claims Section, for consideration of that issue.

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) (2005) 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.

We agree the separation issue needs to be determined in light of the able and available determination. Because the record understandably lacks such evidence (no statutory prior notice to the parties), we remand this matter to the administrative law judge for the limited purpose of consideration of the able and available issue in light of whatever determination has been made regarding the separation issue. The administrative law judge need not take any additional evidence on the able and available issue.

DECISION:

The decision of the administrative law judge dated August 19, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further consideration consistent with this decision, and modification of the original decision, if necessary, which provides the parties appeal rights.

John A. Peno
Elizabeth L. Seiser
Monique F. Kuester

AMG/fnv