

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