

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

ANDRE D BOYD

Claimant,

and

TYSON FRESH MEATS INC

Employer.

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HEARING NUMBER: 10B-UI-07767

**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 held July 15, 2010 in which the issue to be determined was whether the claimant was discharged for misconduct, or whether the claimant voluntarily left for good cause attributable to the employer. The administrative law judge's decision was issued July 19, 2010, which held that the claimant voluntarily quit his employment without good cause attributable to the employer.

The claimant testified that he only wanted time off, i.e., leave of absence, which was denied. (Tr. 3) The administrative law judge's decision, however, did not address whether the claimant could be eligible for FMLA since he only wanted time off to take care of his sick mother and brother; nor did the administrative law judge question whether he accepted work while he was away; or if the claimant returned to the employer to offer his services at any time.

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.

While it is clear from this record that what prompted the claimant's leaving was his need to take care of his sick mother and disabled brother, the administrative law judge elicited no testimony as to whether the claimant could be eligible for FMLA, or whether he intended to return to the employer.

Iowa Code section 96.5(1)(c) (2009) provides:

The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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. Since we do not know the answers to any of the aforementioned questions, the Board must remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated July 19, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv