

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

RICKY G WEBB

Claimant,

and

CRST VAN EXPEDITED INC

Employer.

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HEARING NUMBER: 11B-UI-06399

**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 June 9, 2011, in which the issues to be determined were whether the claimant was discharged for misconduct; whether the claimant voluntarily left for good cause attributable to the employer; and whether the claimant was overpaid unemployment benefits. The administrative law judge's decision was issued June 13, 2011, which determined that the claimant was allowed benefits. 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:

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. The administrative law judge made reference to a separation that occurred on August 29, 2010 that is not a part of this hearing, and for which there was no prior ruling on that separation. The only evidence in this record is the employer's testimony that on that date, the claimant became an independent contractor, and ceased to be an employee. 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. While we understand that February 6, 2011 was the end of the claimant's independent contractor relationship with the employer, we do not know what type of separation previously occurred, and what impact that separation might have on the claimant's eligibility for unemployment benefits. For this reason, we must remand this matter for the taking of additional evidence, and a decision on the August 29, 2010 separation.

DECISION:

The decision of the administrative law judge dated June 13, 2011 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. The administrative law judge shall issue a new decision in consideration of this new evidence, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/kjo