

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

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**BEVERLY J UTLEY**

Claimant,

and

**CASEYS MARKETING COMPANY**

Employer.

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**HEARING NUMBER: 08B-UI-01130**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION: 10A.601 Employment Appeal Board Review**

**FINDINGS OF FACT:**

A hearing in the above matter was held February 18, 2008. The administrative law judge's decision was issued February 19, 2008. The administrative law judge's decision has been appealed to the Employment Appeal Board. The claimant received progressive written warnings against writing 'bad' checks. The final incident occurred when a check was written and returned for insufficient funds on January 5, 2008 in the amount of \$72.46. (Tr. 8) The claimant denied writing any check for that amount; instead, she wrote a check for \$25.00 on December 15, 2007, which "... they (the bank) paid it..." (Tr. 9) The claimant was terminated on February 19, 2008.

The claimant mailed exhibits to the Appeals Section in preparation for the hearing; however these exhibits did not arrive prior to the hearing and were therefore not admitted into evidence.

**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.

The record supports that the claimant received two warnings against writing bad checks. However, the record also contains conflicting testimony as to whether the final insufficient check was the claimant's

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fault. Based on what the employer read into the record, the claimant was not told that she couldn't write any additional checks after her warning; rather, she was told that she couldn't write any future 'bad' checks. (Tr. 18)

The claimant refutes that she wrote a bad check and attempted to submit corroborating documentation she obtained from her bank which purported to show that her check (\$25.00) did, in fact, clear the bank. She mailed this document on February 14<sup>th</sup>, which was four days prior to the hearing. The document was not stamped as received by the agency until February 20, 2008. Because this case hinges on whether or not the claimant did, in fact, write a 'bad' check back in December, we are unable to make a decision as to whether disqualifying misconduct occurred. For this reason, we shall remand this matter so that the administrative law judge may accept this new and additional evidence in order to more fully develop the record in accordance with the precepts of Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996).

#### **DECISION:**

The decision of the administrative law judge dated February 19, 2008, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section for the limited purpose of allowing the claimant's exhibits (received February 20, 2008) into the record so that testimony from both parties may be obtained regarding those exhibits and the date of the check at issue. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

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Elizabeth L. Seiser

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John A. Peno

AMG/ss

#### **DISSENTING OPINION OF MARY ANN SPICER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Mary Ann Spicer

AMG/ss