

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

KELSEA L ANDERSON

Claimant

and

CARROLL-KUEMPER

Employer

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HEARING NUMBER: 20B-UI-11285

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Claimant filed an appeal via fax on December 4, 2020, one day beyond the statutory deadline of December 3, 2020. The reason for the delay was because the Claimant did not timely receive the Notice of Decision. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

A hearing in the above matter was scheduled for November 4, 2020 in which the issues to be determined were whether the claimant was laid off; discharged for misconduct; or whether the claimant voluntarily left for good cause attributable to the employer.

At the start of the hearing, the Claimant requested that her appeal be withdrawn. The reason for her request was because she had two hearings scheduled (20A-UI-11284 and 20A-UI-11285), back to back, and mistakenly believed she didn't need to appeal the above-referenced matter.

The administrative law judge's decision was issued November 18, 2020, which affirmed the claims representative's decision that denied benefits, and approved the Claimant's request to withdraw her appeal. 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) (2019) 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.

486 IAC 3.1(15) provides:

Withdrawal of appeal. Any appeal may be withdrawn by the appellant, by written request, anytime before a decision is issued by the appeal board. If a request is made, the appeal shall be dismissed. A request for reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal or, in the event of fraud, within 60 days after discovery of the fraud.

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. 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. Since this matter was mistakenly withdrawn, no testimony on the merits was taken. For this reason, the Board shall remand this matter for a new hearing.

DECISION:

The decision of the administrative law judge dated November 18, 2020 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, 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.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn