## BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

SHANE M JENSEN

Claimant, : **HEARING NUMBER:** 13B-UI-07005

and

: EMPLOYMENT APPEAL BOARD

IOWA TRENCHLESS LLC : DECISION

Employer.

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

#### DECISION

### FINDINGS OF FACT:

A hearing in the above matter was scheduled for July 17, 2013 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.

During the hearing, the Employer indicated that the Claimant was recalled to work on May 13<sup>th</sup> after being laid off temporarily on January 6, 2013. The Claimant argued that he didn't quit, but was told he wasn't wanted back. The Employer argued that the Claimant quit telling him that he did not want to return after the Employer offered him a job cleaning augers for \$8/hour. The administrative law judge raised a concern about whether this case involved a recall to work and an offer of suitable work.

The administrative law judge's decision was issued July 24, 2013, which determined that the Claimant voluntarily quit without good cause attributable to the Employer. 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.

# 871 IAC 24.24(2)"b" provides:

Job within claimant's capabilities. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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. Although the administrative law judge's elicited some testimony about a job offer, there was nothing in the record about the job from which the Claimant had been laid off. The issue of whether the Claimant was recalled and offered suitable work was relevant to the outcome of this matter; however, it was not noticed for the parties to present evidence on either side at the hearing. For this reason, the Board shall remand this matter for further consideration.

#### **DECISION:**

The decision of the administrative law judge dated July 24, 2013 is not vacated. This matter is remanded to the Iowa Workforce Development Center, Claims Section, for a determination of whether the Claimant was recalled to work and whether he refused a suitable offer of work. That decision shall provide the parties appeal rights.

John A. Peno	
Monique F. Kuester	
Cloyd (Robby) Robinson	

AMG/fnv