

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

RODERICK L BROWN

Claimant,

and

CRST FLATBED REGIONAL INC

Employer.

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HEARING NUMBER: 13B-UI-03358

**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 April 18, 2013. The administrative law judge's decision was issued April 19, 2013. The administrative law judge's decision has been appealed to the Employment Appeal Board. The Board finds that the notice of hearing was inadequate to give the parties notice of the issues which were adjudicated by the Administrative Law Judge's decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2013) 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 Notice of Hearing in this case did not include the separation, but only the very general issue of relief of charges. The parties did not waive notice at the hearing. Now generally, “[i]f new issues appear, different from those which are noticed in the appeal, the board . . . in the interest of prompt administration

of justice and without prejudicing the substantive rights of any party, may hear and decide any issue material to the appeal, even if not specifically indicated as a ground for appeal or not noticed for the administrative hearing.” 486 IAC 3.1(6). Thus the fact that an issue is not raised does not necessarily preclude consideration of that issue at a later stage of the proceedings so long as due process is satisfied. *Id.*; *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 297 (Iowa App. 1996); *Kehde v. Iowa Dept. of Job Service*, 318 N.W.2d 202, 206 (Iowa 1982); *Flesher v. Iowa Dept. of Job Service*, 372 N.W.2d 230, 233 (Iowa 1985). Despite this, however, due process does require some notice to the parties of what issues are to be decided. For example, notice of a disqualification based on a discharge is not adequate notice that the issue of disqualification based on a quit will be adjudicated. *Silva v. Employment Appeal Bd.* 547 N.W.2d 232 (Iowa App. 1996); Iowa Code § 17A.12(2)(c) and (d). Here, no Code section was cited, and the rule in question does not expressly deal with separations. We note that in *Silva* the Court found a rule considering quit and terminations to be the single issue of “separation” was inadequate notice. Just so we do not think they can subsume under the single issue of “charging.” The section for a quit and terminations is Iowa Code §96.5, and this was not included on the notice of hearing, nor was notice waived by the parties. A remand for an additional hearing is therefore mandatory so that the parties can address the issue of disqualification based on the nature of the separation.

DECISION:

The decision of the administrative law judge dated April 19, 2013 is not vacated at this time, 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 Workforce Development Center, Appeals Section. The administrative law judge shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson