

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

NICHOLAS B MILLER

Claimant

and

INTERCON CONSTRUCTION INC

Employer

HEARING NUMBER: 20BIWDUI-0056

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for April 22, 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; and whether the Claimant was overpaid.

At the hearing, the Claimant testified that his regular Employer experienced a slowdown in work some time in mid-November. The union sent the Claimant, a construction worker, on a temporary assignment for his Employer that he worked for a short period of time. He left that assignment and subsequently filed for unemployment benefits for which he was denied. A hearing was held, and the administrative law judge's decision was issued April 23, 2020, which determined the Claimant was disqualified for benefits because he 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) (2015) 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.

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817 IAC 24.25(40) provides:

Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

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.

In the instant case, the record contains no specific dates as to when the Claimant was actually laid off from his regular employment; when he started the temporary assignment and when that temporary assignment actually ended. Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence to determine the same.

DECISION:

The decision of the administrative law judge dated April 23, 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

Myron R. Linn

AMG/fnv