

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

WHITNEY M BUNTING

Claimant,

and

CHECK INTO CASH OF IOWA INC

Employer.

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HEARING NUMBER: 14B-UI-04106

**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 scheduled for April 24, 2014 in which the issues to be determined were whether the claimant was laid off; discharged for misconduct; voluntarily left for good cause attributable to the employer; whether the claimant has an overpayment; whether the employer participated in the fact-finding; and whether the employer's account is chargeable and must any overpayment be repaid by the Claimant.

The Claimant did not appear at the administrative law judge's hearing, but the Employer did participate. During the administrative law judge's hearing, the Employer indicated that he, himself, did not participate in the Fact-finding Interview, and that he had no knowledge of who did. The administrative law judge's decision was issued May 9, 2014, which determined that the Claimant was ineligible for benefits because she was discharged from work for misconduct. That decision also determined that the Claimant was not obligated to repay the overpayment created by the disqualification based on the Employer's nonparticipation in the Fact-finding Interview. 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.

The Board would take judicial notice of the agency document in the file (Notice of Unemployment Insurance Fact-finding Interview), which is marked "yes" indicating that the Employer satisfied the standards of participation pursuant to Iowa Code section 96.3(7)"b." The Claimant, who did not appear at the administrative law judge's hearing, did not appeal the administrative law judge's disqualifying decision.

Based on these circumstances, we conclude that a remand is necessary. The administrative law judge's decision *only* as to the Employer's participation in the Fact-finding may be subsequently reversed, thereby reinstating the Claimant's overpayment liability as a result of this remand decision. However, we cannot affirm, nor let stand the administrative law judge's decision as to the merits of this case. To do so would effectively deprive the Claimant of her due process right to appeal the merits from which the overpayment came in the first place.

There is no question that due process principles apply in the context of hearings for persons seeking unemployment benefits. Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. Iowa courts have held that due process requires "the opportunity to be heard at a meaningful time and a meaningful manner." Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

Because a reversal of the administrative law judge's decision as to the Employer's participation would make the Claimant responsible for the overpayment, we find that the Claimant would not have had an opportunity to present her case on the merits that resulted in the overpayment. As such, the Board concludes that the record as it stands is insufficient for it to issue a complete decision on this matter. 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. To avoid what, in essence, would be depriving the Claimant of her due process right to defend the merits, the Board shall remand this matter for the limited purpose of reopening the record so as to allow the Claimant the opportunity to present her case as well as allow the parties to cross-examine as necessary, and allow the administrative law judge to consider the Employer's new and additional evidence regarding their participation in the Fact-finding Interview.

DECISION:

The decision of the administrative law judge dated May 9, 2014 is not vacated. 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.

Kim D. Schmett

Cloyd (Robby) Robinson

Ashley R. Koopmans

AMG/fnv