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

JEFFREY L VECERA	: HEARING NUMBER: 11B-UI-08983
Claimant,	:
and	EMPLOYMENT APPEAL BOARD
AVENTURE STAFFING	E DECISION

Employer.

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

# **DECISION**

## **UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** as to the able and available issue; and **REMAND** as follows:

### **FINDINGS OF FACT:**

A hearing in the above matter was held August 1, 2011 in which the issues to be determined were whether the Claimant was able and available for work; and whether the Claimant sought reassignment from the employer. The administrative law judge's decision was issued August 3, 2011, which determined that the Claimant was able and available for work beginning August 1, 2011 and therefore eligible for benefits.

During the hearing, the Claimant acknowledged that the last time he worked full-time was in 2009. The employer offered him numerous assignments for which the Claimant turned down because of other responsibilities. (Rec. @ 8:27; 9:25; 13:13) The administrative law judge did not determine whether the Claimant refused any suitable offers of work prior to August 1, 2011. 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.

Iowa Code Section 96.5(3) (2009) provides:

*Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be 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 merits further consideration. 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. The record establishes that the Claimant purposely did not accept full-employment the employer offered to him due to other obligations. Yet, the administrative law judge did not, specifically, address whether the Claimant refused any offers of suitable work. For this reason, 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 August 3, 2011 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.

John A. Peno

Elizabeth L. Seiser

AMG/fnv