

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

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**DIEDRICH E WEMPEN**

Claimant

and

**WINNEBAGO INDUSTRIES**

Employer

**HEARING NUMBER: 17BUI-01421**

**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 February 28, 2017 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.

At the hearing, it was clear the Claimant had excessive absences and tardies during his two years of employment. Yet, the administrative law judge made no distinction between which absences were excused, or unexcused. The administrative law judge's decision was issued March 6, 2017, which determined that the Claimant was denied for benefits because excessive absenteeism. 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.

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.

The burden is on the employer to establish that the Claimant committed job-related misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). In *Cosper*, the court held that absences due to illness, which are properly reported, are excused and not misconduct. The court reversed and remanded this question back to the agency when the agency failed to distinguish between Cosper's absences. Since we do not know whether and which of the Claimant's absences in this case were excused or not, 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 March 6, 2017 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 the same 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.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv