

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

NANCY E WIGGINS

Claimant,

and

**AMERISTAR CASINO COUNCIL BLUFFS
INC**

Employer.

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HEARING NUMBER: 12B-UI-15502

**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 January 3, 2012. The administrative law judge's decision was issued January 4, 2012. During the hearing, the Claimant acknowledged receiving the Employer's exhibits, which were not individually read into the record. (Tr. 2) However, when the Claimant went home after the hearing, she received in the mail additional Employer's exhibits that she did not know were included as exhibits during the hearing. In addition, the Claimant's witnesses were never called to participate. (Tr. 14)

The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing before the administrative law judge is incomplete.

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 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 Claimant was precluded from fully developing her case when unbeknownst to her, she did not have all the Employer's documents available for her perusal and cross-examination at the hearing. The fact that her firsthand witnesses were not called further impeded her due process. For these reasons, the Board is remanding this matter so as to allow the administrative law judge to reopen the record so that the Claimant may review and cross-examine the Employer on the exhibits she did not receive prior to the hearing; and to allow the Claimant's witnesses to participate and be cross-examined.

DECISION:

The decision of the administrative law judge dated January 4, 2012, 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

Monique F. Kuester

AMG/fnv