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

JANE P BEDET	· :
Claimant,	: HEARING NUMBER: 09B-UI-07681
and	EMPLOYMENT APPEAL BOARD
COOPERATIVE ELEVATOR ASSOCIATION	E DECISION
Employer.	

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was held June 11, 2009 in which the claimant, Jane P. Bedet, indicated that she, initially, "...lost [a] full-time job that [she] had for 28 years... a year ago last January..." (Tr. 5) She filed a claim for unemployment benefits on March 8, 2009, but didn't have enough wage credits to continue collecting benefits. (Tr. 5) In the meantime, Ms. Bedet, continued working a part-time job as a cleaning person for Cooperative Elevator Association. (Tr. 4-5, 6) She also mentioned that she *had* been working two jobs. (Tr. 5) The claimant did not want to draw benefits from her current employer and told the administrative law judge 'yes' she wanted to withdraw her appeal when he asked. (Tr. 6)

There was no evidence as to when the claimant filed her original claimant for benefits, or any evidence regarding her previous full-time employment and to what degree her original claim is influenced by her current employment and current claim. Additionally, there was not testimony taken with regard to the second job she *had* been working. The administrative law judge entered a decision granting a withdrawal from which the claimant now appeals based on her misunderstanding of the process.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) 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 record before the Employment Appeal Board is incomplete. Although the claimant mentioned prior full-time employment upon which she filed an original claim, there was no delving into the circumstances of that prior separation, or the possible separation from second part-time job.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily guits without good cause part-time employment and has not regulified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily guit shall be notified on the Form 65-5323 or 60-0186, decision of the job service representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the regualification requirements following the voluntary guit without good cause of the part-time employer the wages paid in the parttime employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable regualification requirements, the wages paid by the part-time employer shall be transferred to the account of the employer with which the individual regualified, transferred to the balancing account, or remain with the employer from which they were earned.

The court in <u>Welch v. Iowa Department of Job Service</u>, 421 N.W.2d 150 (Iowa App. 1988) held that a total disqualification could only result from quitting the primary or regular (full-time) employer. To excuse a claimant's full-time employer from which he was separated and not disqualified in the first place, would result in a windfall to that employer should the subsequent part-time employer be held liable for benefits after a claimant's subsequent separation.

As the Iowa Court of Appeals noted in <u>Baker v. Employment Appeal Board</u>, 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. Since we have no way of knowing what effect any prior separations may have upon the claimant eligibility at this time, we remand this matter for further consideration with regard to the possible McCarthy-Welch issues.

DECISION:

The decision of the administrative law judge dated June 17, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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

Monique F. Kuester

AMG/fnv