

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

DESHAWN R BYRD

Claimant

and

US POSTAL SERVICE

Employer

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HEARING NUMBER: 15B-UCFE-00020

**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 July 6, 2015 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, the Employer testified that the Claimant was initially recommended ‘for removal’ and returned to work after a step 2 grievance procedure with pay, for which he only received a 14-day suspension. (28:30-28:40) There was no discussion about whether the lump sum he received was considered back pay. (Exhibit 5)

The administrative law judge's decision was issued July 10, 2015, which determined that the “...the claimant was not suspended for an act of misconduct and...is not disqualified for the receipt of unemployment insurance benefits. 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 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 record is unclear as to whether the Claimant was actually separated from this employment, or what the nature of that lump sum payment was, or for what timeframe it covered. Since we do not know the answers to these questions, the Board must remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated July 1, 2015 is not vacated. This matter is **REMANDED** to the Iowa Workforce Development Center, Claims Bureau to determine if the Claimant received back pay; and if so, for what period of time did he receive it. And if the Employer has any remaining liability based on that determination, then the issue of the Claimant's separation needs to be sent to the Appeals Section to be addressed by a different administrative law judge in light of the Claims Bureau's determination. The administrative law judge shall conduct a hearing following due notice, and shall subsequently issue a decision which provides the parties appeal rights.

Kim D. Schmelt

James M. Strohman

AMG/fnv