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

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LAWRENCE JOHNSON

**HEARING NUMBER: 08B-UI-05766** 

Claimant,

.

and

**EMPLOYMENT APPEAL BOARD** 

DECISION

ASR INTERNATIONAL CORP

Employer.

SECTION: 10A.601 Employment Appeal Board Review

# DECISION

## FINDINGS OF FACT:

A hearing in the above matter was held July 9, 2008. The administrative law judge's decision was issued July 9, 2008, which held that the claimant was "... not unemployed as a result of his employer going out of business at the location where he was last employed..." The record contains no evidence regarding if and what business exists at that same location.

## 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.

Since the record of the hearing before the administrative law judge does not contain enough evidence upon which the Employment Appeal Board can render an informed decision. 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. Therefore, this matter is remanded for a new hearing so that the administrative law judge may obtain additional evidence as to what business is now operating out of the this location.

### **DECISION:**

The decision of the administrative law judge dated July 9, 2008, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of this record. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

Elizabeth L. Seiser
Monique F. Kuester

AMG/fnv

## DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would find that the record contains enough evidence to determine that ASR ceased to function at the premises. ASR did not sell or transfer their business to another employer and does not operate anywhere in the state of Iowa. (Tr. 6, lines 8-10) Although the "doors did not close" at the premises within the meaning of the law, I would find that under the circumstances the employer's ceasing to do business, at all, was analogous and tantamount to a business closing. For this reason, I would conclude that the claimant should be allowed benefits provided he is otherwise eligible.

John A. Peno	

AMG/fnv