

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

LISA M STUDER

Claimant

and

IOWA80.COM INC

Employer

HEARING NUMBER: 16BUI-12117

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

A hearing in the above matter was scheduled for November 30, 2016 in which the issues to be determined were whether the Claimant was laid off; discharged for misconduct or voluntarily left for good cause attributable to the Employer; and whether the Claimant was overpaid benefits. Also to be determined were the issues of whether the Claimant must repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

During the hearing, the administrative law judge repeatedly and curtly interrupted the Employer's witnesses as the witnesses gave testimony. (10:57-11:25; 14:01-14:30; 16:21-16:41; 26:54-27:13; 38:53-39:05; 42:51-43:04; 48:20-48:32) She also repeatedly stopped short the Claimant's attempt to present portions of her testimony in answering questions. (53:32-53:41; 1:06:25-1:06:37; 1:08:20-1:08:27; 1:09:55-1:10:19; 1:13:25-1:13:40)

The administrative law judge's decision was issued December 1, 2016, which determined that "...the employer has not met its burden of proof to establish job related misconduct..." and allowed 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) (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. In the instant case, the administrative law judge repeatedly interrupted the both parties as they attempted to answer questions posed by herself or the Employer's attorney with the phrase, "yes, no or I don't know..." which impacted the witnesses' ability to fully present each party's case. Based on this record, we conclude that the administrative law judge's overall demeanor prevented the parties from receiving a fair hearing. For this reason, we shall remand this matter for a new hearing so that the parties may fully avail themselves of their due process rights. While we appreciate the administrative law judge's need to expedite her hearing in a timely manner, that need cannot supersede the parties' right to a full and fair hearing.

DECISION:

The decision of the administrative law judge dated December 1, 2016 is not vacated. This matter is remanded to a different administrative law judge in the Unemployment Insurance Appeals Bureau, for a new hearing. The administrative law judge shall conduct a hearing following due notice, and shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/ss