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

	HEARING NUMBER: 08B-UI-09668
Claimant,	
and	EMPLOYMENT APPEAL BOARD
UNITED PARCEL SERVICE	

Employer.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The claimant's appeal contained submitted new and additional information (letter from the claimant's mother) to the Employment Appeal Board. Because the Board found the new and additional information to be both material and relevant to the claimant's separation, the Board issued an Order that allowed the employer ten days to respond. The Board is now ready to issue its decision.

FINDINGS OF FACT:

A hearing in the above matter was held October 30, 2007. The administrative law judge's decision was issued October 30, 2007. The administrative law judge's decision has been appealed to the Employment Appeal Board. The claimant submitted new and additional evidence that was both relevant and material to the issue to be determined for which the employer objected to its acceptance into the record based on the hearsay nature of the information. That information, in part, shed light on the claimant's ability to effectively communicate his case both to the employer and during the hearing.

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 is incomplete in light of the new and additional information presented, the Board is unable to render a fair decision without taking it into consideration. For this reason, the Board shall remand this matter back to the administrative law judge in order that the record be reopened for the acceptance of the accept this new and additional information. The parties shall be allowed to present further testimony and cross-examination, respectively, as it relates to the claimant's separation.

DECISION:

The decision of the administrative law judge dated October 30, 2007, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a new decision in consideration of the new and additional evidence, which provides the parties appeal rights.

Elizabeth L. Seiser

John A. Peno

Mary Ann Spicer

AMG/kjo