

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

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**DJIBY DIAWARA**

Claimant,

and

**TEAM STAFFING SOLUTIONS INC**

Employer.

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**HEARING NUMBER: 13B-UI-01348**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for March 6, 2013 in which the issues to be determined were whether the claimant was discharged for misconduct; and whether the claimant voluntarily left for good cause attributable to the employer; and whether the claimant was overpaid. During the hearing, it was established that the claimant left the country for the sole purpose of taking care of his sick mother who lived in Africa, and ended up being gone beyond 10 days there, i.e., nearly half the year. The administrative law judge's decision was issued March 7, 2013 which determined that the "...[c]laimant left employment for personal reasons that were not attributable to the employer for more than ten days and did not request additional time to be approved...as required by...96.5(1)"f".

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. Here, the

record clearly establishes that the claimant's personal reason for leaving work directly involved the taking care of his sick mother who lived in Africa.

Iowa Code § 96.5(1)"c" (2013) provides:

The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

There is nothing in the record to establish whether the claimant satisfied the requirements of the above-mentioned statute by immediately returning to the employer to offer his services and to show whether or not the claimant accepted other employment in the interim. Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence to determine the answers to the same.

**DECISION:**

The decision of the administrative law judge dated March 7, 2013 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, 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.

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John A. Peno

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Cloyd (Robby) Robinson

AMG/ss

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/ss