

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

---

JASON B ESSARY

Claimant,

and

ABF FREIGHT SYSTEMS INC

Employer.

:  
:  
:  
:  
:  
:  
:  
:

HEARING NUMBER: 09B-UI-06304

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

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

**DECISION**

**FINDINGS OF FACT:**

A hearing in the above matter was held May 20, 2009. The administrative law judge's decision was issued May 26, 2009 finding the claimant was temporarily laid off and then partially employed on a day-to-day basis. On March 10<sup>th</sup>, the claimant told the employer he was going to apply for unemployment benefits. The employer then replaced the claimant with a junior employee. (Tr. 6) The record is unclear and incomplete as to whether the claimant had a choice in the separation.

**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

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 claimant testified that the union contract allowed the claimant to deny work if it was not full-time employment, which would indicate a possible optional layoff, and bumping rights. See, Iowa Code section 96.5(1)(h) (2009) and 871 IAC 24.24(5), which provides:

*Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits or federal supplemental compensation.

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. Based on the facts of this case, we are unable to make a well-reasoned decision. For this reason, we shall remand this matter for further consideration.

#### DECISION:

The decision of the administrative law judge dated May 26, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. A new decision shall be issued. However, if a new hearing is necessary, the administrative law judge shall conduct a hearing following due notice, and then issue a decision which provides the parties appeal rights.

---

John A. Peno

---

Elizabeth L. Seiser

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

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

---

Monique F. Kuester

AMG/amg