

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

---

JOSE B RIVERA	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-13043
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
TYSON FRESH MEATS INC	:	
	:	
Employer.	:	

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

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed September 9, 2009. The notice set a hearing for September 28, 2009. Neither the claimant nor the employer appeared for or participated in the hearing. The claimant's attorney, however, was present and ready to proceed with the hearing. The administrative law judge did not hold a hearing and instead based the decision on the administrative file, which contained only two unsubstantiated statements from the employer.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2009) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a 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.

Although neither party was unavailable at the hearing, the claimant's attorney was ready and able to follow through on the claimant's behalf. Because the administrative law judge did not hold a hearing, 'the record' containing only two statements from the employer with no corroborating evidence, is inadequate. The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In addition, 871

IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

We find that the purported record of this matter lacks substantial evidence to support the administrative law judge's decision. Considering the claimant's attorney was available, it was incumbent upon the administrative law judge to take evidence from the party present so that the Board would have some evidence upon which to render its decision. Because this record is essentially incomplete, we must remand this matter for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated September 30, 2009 is not vacated. 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 decision which provides the parties appeal rights.

---

John A. Peno

---

Elizabeth L. Seiser

---

Monique F. Kuester

AMG/ss