

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

DARREN J COX	:	
	:	HEARING NUMBER: 21B-UI-13088
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
PRESTAGE FOODS OF IOWA LLC	:	
	:	
Employer	:	

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for December 21, 2020 in which the issues to be determined were whether the claimant’s appeal was timely; was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the Employer.

At the hearing, the administrative law judge determined the Claimant’s appeal was timely, and that the Claimant had excessive absenteeism. Yet, the record lacks evidence as to why the Claimant was absent on August 6, 7, 9, 13, 14, 15, 16, 19, and 20th, as well as partially on August 8, 12, 21, and 23rd; nor is there any evidence as to whether those absences were reported. There is no explanation as to how the Claimant’s absences on August 26, 28 and 29 led to his termination.

The administrative law judge's decision was issued January 7, 2021, which determined that the Claimant was disqualified for benefits because job-related misconduct. 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) (2019) 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 did not elicit testimony regarding why the Claimant was absent on August 6, 7, 9, 13, 14, 15, 16, 19, and 20th, and partially on August 8, 12, 21, and 23rd. There was no evidence taken whether those absences were reported. Additionally, there is little evidence to establish why the Claimant's absences on August 26, 28 and 29 resulted in his termination. 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 these questions.

DECISION:

The decision of the administrative law judge dated January 7, 2021 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to the *same* administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision. The administrative law judge shall conduct a hearing following due notice, and then issue a decision which provides the parties appeal rights.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

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.

Myron R. Linn