

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

KARL D ZIELSTORF

Claimant,

and

ENGINEERED PLASTIC COMPONENTS
INC

Employer.

HEARING NUMBER: 09B-UI-09978

EMPLOYMENT APPEAL BOARD
DECISION

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was scheduled for July 28, 2009 but neither party participated. The administrative law judge's decision was issued July 28, 2009. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing contains almost no evidence bearing on the separation. The fact finding information in this case has been lost by Iowa Workforce.

REASONING AND CONCLUSIONS OF LAW:

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

5. 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.

Ordinarily even in cases where no party has appeared the Board has information to review. Here Iowa Workforce Development has mislaid that information. The Employer did prevail in front of the fact

finder so *some* information must have been provided. Meanwhile the Employer has provided substantial information in its appeal to the Board. Naturally we cannot consider this since it is new and additional

information not presented at hearing. Yet it is entirely possible that this information was presented at fact finding and has been lost. With no information to review due to government error we feel that a remand to present information and for another opportunity for *both* parties to present evidence is warranted.

DECISION:

The decision of the administrative law judge dated July 28, 2009 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 decision, which provides the parties appeal rights.

Elizabeth L. Seiser

Monique Kuester

RRA/fnv

DISSENTING OPINION OF JOHN A. PENO :

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.

John A. Peno

RRA/fnv