

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

JANET M RETTENMAIER

Claimant,

and

HILLCREST FAMILY SERVICES

Employer.

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HEARING NUMBER: 13B-UI-14094

**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 January 3, 2013 in which the issue to be determined was whether the Claimant was able and available for work; and whether the Claimant is still employed at the same hours and wages. The administrative law judge's decision was issued January 7, 2013, which determined that "[t]he Claimant is disqualified from receiving unemployment insurance benefits because she is still working part-time for this Employer." The record is void of any evidence as to whether the Claimant is able and available for work, and whether she has any wage credits from full-time work in her base period. 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. There is nothing in the record to establish if the Claimant is actively and earnestly seeking employment such that would make her able and available to perform other work. Additionally, there is no evidence to show whether the Claimant has any base period earnings from full-time work. Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence to determine that question.

DECISION:

The decision of the administrative law judge dated January 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.

John A. Peno

Cloyd (Robby) Robinson

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.

Monique F. Kuester

AMG/fnv