

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

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**SAMUEL L LOCKETT**

Claimant,

and

**SCHENKER LOGISTICS INC**

Employer.

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**HEARING NUMBER: 11B-UI-13369**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**D E C I S I O N**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed October 20, 2011. The notice set a hearing for November, 9, 2010 in which the issue of whether the claimant was discharged for misconduct, or voluntarily left for good cause attributable to the employer was to be determined. The claimant was to be subjected to a random drug test for which he, instead, requested admission into the employer's employee assistance program (EAP) that was denied. His request was denied and the test was performed, yielding a positive test result. The employer and his witness were split as to whether a split sample was taken. (Tr. 5, 10, 16) The claimant was unclear as to whether he received a certified letter informing him of his "...right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test..." See, Iowa Code section 730.5(7)"i" (1) (2009).

The administrative law judge's decision was issued November 12, 2010, which determined the claimant was discharged for disqualifying misconduct based on the claimant's positive drug test results.

**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 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. The administrative law judge failed to establish whether there was, in fact, a split sample and whether the claimant was ever told about the same. Additionally, there is very little evidence in the record to support that the employer complied with Iowa Code section 730.5(7)“i”(1) (2009), i.e., sent a certified letter, etc. While the claimant acknowledged receiving a termination letter (Tr. 14), it was not the certified mail in question. Also, there was no evidence as to what the employer’s EAP consisted of.

According to the precepts of 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. Since this record lacks relevant evidence for the board to render a decision, we must remand this matter for further consideration.

**DECISION:**

The decision of the administrative law judge dated November 12, 2010, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen this matter for further development of the record consistent with this decision, i.e., accepting the certified letter and eliciting testimony from both parties with regard to the same. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

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