

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
Website: eab.iowa.gov**

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Claimant	:	<b>APPEAL NUMBER:</b>	23B-UI-08279
	:	<b>ALJ HEARING NUMBER:</b>	23A-UI-08279
	:		
and	:	<b>EMPLOYMENT APPEAL BOARD</b>	
	:	<b>DECISION</b>	
	:		
	:		
Employer	:		
	:		
	:		

**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 held September 7, 2023. The administrative law judge's decision was issued September 14, 2023. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing, as now constituted, contains no evidence.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2023) 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.

There is nothing in this record bearing on the Claimant's separation from employment. Since the record of the hearing before the administrative law judge is incomplete, the Employment Appeal Board cannot make a reasoned decision. 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. We think it more fair that the parties have a chance to participate in a hearing, as appropriately limited, rather than simply having us issue a decision based on an empty record.

We thus remand, but the parties and their representative must remain vigilant to assure that they do not even offer as evidence information – *including oral information* - that would run afoul of our *Order Regarding Record* issued this day. For this reason, this matter must be remanded for a new hearing to address the issue of whether the Claimant's separation from employment was disqualifying.

**DECISION:**

The decision of the administrative law judge dated September 14, 2023 is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge for the purpose of developing an entirely new record as instructed in our *Order Regarding Record*. 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.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv

**DATED AND MAILED: OCT 31 2023**