

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

ORETHA KARMA

Claimant

and

SWIFT PORK COMPANY

Employer

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HEARING NUMBER: 16B-UI-11497

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for November 7, 2016 in which the issues to be determined were whether the claimant was laid off; discharged for misconduct; or whether the claimant voluntarily left for good cause attributable to the employer; and whether the Claimant was overpaid. Additional issues to be addressed were whether the Claimant should repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

The Claimant did not participate in the hearing at which the additional issue of whether the Claimant was able and available for work was raised. The Employer waived his right to notice for the issue, but the Claimant had no opportunity to waive it due to her nonparticipation.

The administrative law judge's decision was issued November 9, 2016, which determined that the Claimant was not eligible for benefits effective September 18, 2016 due to not being able and available for work. 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) (2015) 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 addition, the court in *Eves v. Iowa Employment Security Commission*, 211 N.W.2d 324 (Iowa 1973) held that the agency does not acquire jurisdiction to hear a case until mailed notice is actually received. Here, even if the Claimant did receive notice, that notice did not include that the issue of able and available was to be adjudicated. The Claimant was not available to waive that notice, which is legally required. The opportunity to waive this issue is crucial to the Claimant, as the outcome of this matter has a direct and negative impact on the Claimant. For this reason, we shall remand this matter for a new hearing with notice that includes all issues to be determined.

DECISION:

The decision of the administrative law judge dated November 9, 2016 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 an administrative law judge in the Unemployment Insurance Appeals Bureau to conduct a new hearing following due notice. The administrative law judge shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv