

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

NEIMA T LOROTO

Claimant

and

SWIFT PORK COMPANY

Employer

HEARING NUMBER: 18BUI-05201-O

**EMPLOYMENT APPEAL BOARD
DECISION**

DECISION

FINDINGS OF FACT:

The administrative law judge issued a decision regarding a preliminary matter in this case dated May 10, 2018. That decision did not resolve the issue of whether the Claimant will receive benefits, but merely scheduled a hearing, and denied a motion to dismiss. The Administrative Law Judge's decision appropriately did not list appeal rights since no one had yet been aggrieved by a decision on the question of benefits. The Claimant has nevertheless appealed the decision of the administrative law judge to the Employment Appeal Board. Agency records indicate that this case is currently scheduled for an in-person hearing on June 7.

REASONING AND CONCLUSIONS OF LAW:

Pursuant to 486 IAC 3.1(2), "a party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board..." The Employment Appeal Board interprets an aggrieved party to be one who receives an unfavorable decision from the administrative law judge affecting benefit rights, or overpayment. Here the decision of the administrative law judge only rules on a preliminary matter, that is, whether the fact finding decisions are inconsistent, and whether one may be binding on all subsequent availability issues. The Administrative Law Judge denied the dismissal as of May 10, but also scheduled a hearing on the "request for a hearing on the Motion to Dismiss." The Administrative Law Judge moreover continues to have a hearing scheduled on the issue of whether benefits should be allowed.

The Board is authorized to hear appeals of decisions resolving the question of benefits and overpayment. Where such issues are still pending, as they are here, there is no final decision on the merits to appeal to the Board. The issues of preclusion, and of benefit disqualification, will not be decided by the Board at this time because we dismiss the current appeal as an appeal of a preliminary matter the disposition of which has not yet aggrieved the Claimant.

If the Claimant loses on the merits of the claim for benefits before the Administrative Law Judge then the Claimant may appeal that decision on the merits. In such an appeal to the Board the issue of the preclusive effect of the claims decisions can be adjudicated by the Board at that time. In other words, the Claimant has not

yet been denied benefits by a decision of an Administrative Law Judge. Until the Claimant is denied benefits by a decision of an Administrative Law Judge, there is no reason to appeal to the Board. *If* the Claimant has benefits denied by an order of the Administrative Law Judge then the Claimant can at the same time appeal that denial and the issue of preclusion to this Board.

We caution the parties that our decision today does not affect the proceedings below and that any scheduled hearing will go forward on a basis unaltered by our decision. The parties should continue to comply with any deadlines or requirements, and continue to make take all appropriate action and planning in preparation for any scheduled hearing at the date and time currently scheduled.

DECISION:

The appeal of the Claimant is **DISMISSED**. The Claimant may raise issues he sought to raise by his motion at the hearing scheduled by the Administrative Law Judge. If he has benefits denied by a *final* decision of the Administrative Law Judge, he may appeal that decision to this Board as usual, and any arguments regarding the preclusive effect of prior fact finding decision can be raised and, if necessary, resolved at that time.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv