

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

BRANT KARELS

Claimant,

and

KASTIM CORPORATION

Employer.

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HEARING NUMBER: 13B-UI-11304

**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 November 1, 2013 in which the issues to be determined were whether the separation was a layoff; discharge for misconduct or a voluntary quit without good cause; whether the claimant was overpaid benefits; and should the claimant repay benefits and/or charge the employer due to employer participating in the Fact-finding?

The Employer offered continued work at other locations, but the Claimant declined. Instead, the Claimant opted to 'take time off' until the store reopened. He filed for benefits beginning September 8, 2013; however, according to Workforce records for which we take official notice, he had not yet been paid benefits as of November 1, 2013, the date of the hearing.

The administrative law judge's decision was issued November 1, 2013, which indicated that the Claimant did not appear for the hearing and determined that the claimant was eligible for benefits provided he is otherwise eligible. 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. The Claimant did not have an established benefit year until the week of September 8, which is the date he actually filed for unemployment benefits. Thus, the Claimant is not disqualified from receiving benefits for declining the employer's offer to work at another location when the Algona restaurant was closed for three to four months. However, there is nothing in the record to establish that the Claimant was actively and earnestly seeking employment during this time. For this reason, the Board shall remand this matter to the Iowa Workforce Development Center, Claims Section, for a determination as to whether he was looking for other work within the meaning of 871 IAC 24.22(3), which provides in relevant part:

Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. *It is essential that the individual personally and diligently search for work.* It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. *The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work. (Emphasis added.)*

DECISION:

The decision of the administrative law judge dated November 1, 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.

Monique F. Kuester

Cloyd (Robby) Robinson