

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

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**TODD R TAEGER**

Claimant,

and

**MODERN WELDING CO OF IOWA**

Employer.

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**HEARING NUMBER: 11B-UI-02935**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

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

**UNEMPLOYMENT BENEFITS ARE DENIED**

**FINDINGS OF FACT:**

A hearing in the above matter was held March 31, 2011 in which the issues to be determined were whether the claimant was discharged for misconduct; and whether the claimant voluntarily left for good cause attributable to the employer. The administrative law judge's decision was issued April 1, 2011, which determined that the claimant was discharged for excessive absenteeism and denied benefits. 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 from available evidence and testimony given the administrative law judge's presumed expertise.

The record contains no evidence as to the nature of the claimant's prior absences, that caused him to be placed on a final warning, i.e., whether he was absent due to illness, personal reasons, etc. Since the administrative law judge did not elicit testimony on the same, the Board must remand this matter for the taking of additional evidence.

**DECISION:**

The decision of the administrative law judge dated April 1, 2011 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/fnv