

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

CHARLENE SMITH

Claimant

and

CASEY'S MARKETING COMPANY

Employer

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HEARING NUMBER: 16B-UI-03704

**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 April 13, 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.

At the hearing, the administrative law judge cut the Claimant off when the Claimant attempted to question the Employer's witness. The administrative law judge then took over the line of questioning and didn't allow the Claimant to fully develop her record. (21:04-21:36; 21:46-22:06)

The administrative law judge's decision was issued April 14, 2016, which determined that the Employer had not met its burden of proof to establish job related misconduct, and allowed 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) (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. However, in the interest of fairness, the administrative law judge must allow each party to ask questions and only offer guidance as to how to a party should question a witness. For this reason, we shall remand this matter for a whole new hearing so as to allow the parties to present their evidence anew.

DECISION:

The decision of the administrative law judge dated April 14, 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 Workforce Development Center, Appeals Section. 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv