

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

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**SHEILA R EDWARDS**

Claimant

and

**HILLCREST FAMILY SERVICES**

Employer

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**HEARING NUMBER: 16B-UI-07678**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**DECISION**

**FINDINGS OF FACT:**

A hearing in the above matter was held August 10, 2016. The administrative law judge's decision was issued August 15, 2016. The Claimant appealed the administrative law judge's decision to the Employment Appeal Board. The Board, however, is unable to make a decision as to the merits of this case based on a failure to address issues related to the period of unemployment. Further issues regarding a possible refusal of suitable work appear to need to be addressed.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2016) 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.

Here the record fails to address the issues of whether the Claimant had a history of working for the Employer over the summers prior to the summer in question. As a consequence the record fails to address the issue of whether the Claimant was a 12-month employee of this Employer, even though not a twelve month instructional worker.

In the case of *Basten v. Hillcrest*, No. 16B-UI-07680 (EAB 2016) we ruled that a claimant who had an established pattern of working for this Employer over the summers, even though not on assignment to an educational institution, was nevertheless “an educational institution employee who performs services on a 12-month year-round basis.” *Basten*, at 3. We wrote that “Where a Claimant has such an established pattern of year round work for a nonprofit, even if some of the work is not on assignment to an educational institution, then that worker is a twelve-month employee for the purposes of rule 24.52(5).” *Id.* We found that “The Claimant is thus a year-round worker for the Employer ‘whose employment is terminated through layoff ...prior to the completion of the 12-month period,’ that is, over the summer break when she was not hired for summer work. In such a case, during this layoff the Claimant ‘is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5).’” *Id.* at 4 (quoting 871 IAC 24.52(5)). We continue to think this analysis is correct. The Administrative Law Judge did not explore with these parties whether the Claimant had an established pattern of working over the summers, and so we remand for that issue to be addressed.

In addition, the information on appeal suggests that there may be an issue of the Claimant having refused a suitable offer of work. We thus also remand so that the Administrative Law Judge can take evidence on whether the Claimant should be disqualified for refusal of suitable work without good cause under Iowa Code §95.5(3). 486 IAC 3.1(6) (“[i]f new issues appear, different from those which are noticed in the appeal, the board may remand such issues to an administrative law judge for appropriate action...”)

The administrative law judge has an affirmative duty to develop the record. *See, Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996); 871 IAC 26.14(2) (“The presiding officer shall inquire fully into the factual matters at issue...”). Since the record of the hearing before the administrative law judge is incomplete, the Employment Appeal Board cannot make a decision on the merits. For this reason, this matter must be remanded for a supplemental hearing on the issues of (1) whether the Claimant had an established pattern of working the summers, and was thus a 12-month employee, prior to filing her claim in 2016 and (2) whether the Claimant should be disqualified for refusal of suitable work without good cause under Iowa Code §95.5(3).

**DECISION:**

The decision of the administrative law judge dated August 15, 2016 is not vacated at this time 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 for the limited purpose of reopening the record and eliciting additional testimony that is consistent with the Board’s concerns set forth in this decision’s Reasoning and Conclusions of Law. The administrative law judge shall conduct this supplemental hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

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Kim D. Schmett

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James M. Strohman