BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

:

YVES M LETUNITA

HEARING NUMBER: 15B-UI-07570

Claimant

:

and

EMPLOYMENT APPEAL BOARD DECISION

TYSON FRESH MEATS INC

Employer

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for July 26, 2015 in which the issue to be determined was whether the Claimant was able and available for work. At the hearing, however, the administrative law judge took testimony only on the issue of a separation for which neither party waived notice. As for the issue actually on the Notice of Hearing, no evidence was taken or submitted.

The administrative law judge's decision was issued July 29, 2015, which determined that the Claimant was ineligible for benefits because he was discharged from work for misconduct. 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. Since the Notice of Hearing set forth a different issue than the one that was adjudicated, the Board must remand this matter for the taking of additional evidence to determine whether the Claimant was able and available for work. In addition, that notice shall also set forth the issue that was actually determined at the hearing (separation).

DECISION:

The decision of the administrative law judge dated July 29, 2015 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. The administrative law judge shall conduct a hearing following due notice containing both issues. The administrative law judge shall issue a decision determining both issues which provides the parties appeal rights.

Kim D. Schmett	 	
Ashley R. Koopmans	 	
James M. Strohman	 	

AMG/fnv