BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

:

LEON J BONEWICZ JR

HEARING NUMBER: 15B-UI-03674

Claimant

:

and

EMPLOYMENT APPEAL BOARD DECISION

FOCUS SERVICES LLC

Employer

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for April 21, 2015 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. Additional issues to be determined were whether the claimant was overpaid benefits and liable to repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

At the hearing, the Claimant attempted to offer several exhibits into evidence, which the administrative law judge denied on the basis that the documents were not relevant. The administrative law judge's decision was issued April 23, 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) (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 Claimant tried to submit evidence, which was denied, but that we find both material and relevant to the issue of whether the Claimant committed misconduct. For this reason, the Board must remand this matter so that the administrative law judge can accept these documents and allow for testimony and cross-examination of the same.

DECISION:

The decision of the administrative law judge dated April 23, 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, 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.

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

AMG/fnv