

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

ROJEANNA J LOPEZ

Claimant,

and

WESTAR FOODS INC

Employer.

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HEARING NUMBER: 10B-UI-09653

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

The notice of hearing in this matter was mailed July 28, 2010, 2010. The notice set a hearing for August 25, 2010 in which the issue of whether the claimant is able and available for work was to be determined. The claimant indicated that she was originally hired to work 35 hours a week. (Tr. 2, 3) Because of a flare-up from a prior employment's work-related injury (Tr. 2), the claimant was recommended to work only 20 hours a week. (Tr. 3, 4) Beginning July 7, 2010, the employer scheduled her for only 5-10 hours weekly. (Tr. 2-3)

The administrative law judge's decision that was issued August 26, 2010 determined that the claimant was not able and available for work and denying 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) (2009) 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. In the instant case, the administrative law judge elicited no testimony regarding how many hours the claimant worked prior to having her hours reduced. Nor is there any testimony on how long, or if the employer ever scheduled the claimant to work 20 hours, as recommended by her doctor. Because there is little evidence in the record about this reduction in hours, we must remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated August 26, 2010, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen the record for the limited purpose of making a more complete record. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/fnv