

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

ALFRED L CRUMM

Claimant,

and

LEACH CAMPER SALES INC

Employer.

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HEARING NUMBER: 13B-UI-07996

**EMPLOYMENT APPEAL BOARD
DECISION**

D E C I S I O N

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

A hearing in the above matter was scheduled for August 14, 2013 in which the issues to be determined were whether the claimant was discharged for misconduct and whether the claimant voluntarily left for good cause attributable to the employer. The Claimant had previously faxed a timely request for a subpoena of a witness that the administrative law judge initially ‘didn’t recall’ receiving, but discovered in the file at the start of the hearing. No subpoena had been issued and the administrative law judge indicated that she “...couldn’t issue [one] until [she] heard the evidence...”

The administrative law judge's decision was issued August 19, 2013, which determined that the Claimant was not eligible for benefits due to disqualifying misconduct. The Claimant has appealed the administrative law judge's decision to the Employment Appeal Board. In his appeal, he asserts that the administrative law judge held the hearing without regard to his subpoena request. That document is nowhere in the file.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2031) 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. We acknowledge that the administrative law judge found the Claimant's subpoena request too late to have issued such a request prior to the hearing; however, the lack of this document in the file, coupled with the administrative law judge's failure to address the document in the decision, leaves the Board at a loss to take the subpoena request into consideration in light of the rest of this record. For this reason, the Board shall remand this matter so that the administrative law judge may find this document, take whatever action is appropriate and address it in her decision.

DECISION:

The decision of the administrative law judge dated August 19, 2013 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.

Lastly, the majority Board members would comment that at times during this hearing the administrative law judge's questions hinged on advocacy for the Employer, which could raise concern about her impartiality, i.e., "...both managers believed that you did argue with the customer...customer's opinion isn't what's at stake here...you must have done something for them to think that you did...what could that have been?..." (28:48-28:05; 27:41-27:00). See, 871 IAC 26.7.

John A. Peno

Cloyd (Robby) Robinson

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board members that the administrative law judge's decision should be remanded for further consideration regarding the Claimant's subpoena request; however, I would not join in the majority Board members' comment regarding the administrative law judge's demeanor at the hearing.

Monique F. Kuester

AMG/ss