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

LAMAR M CLAY Claimant	HEARING NUMBER: 16B-UI-04674
and PILOT TRAVEL CENTERS LLC	EMPLOYMENT APPEAL BOARD DECISION

Employer

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for May 5, 2016 in which the issues to be determined were whether the appeal was timely; whether the claimant was laid off; discharged for misconduct; or whether the claimant voluntarily left for good cause attributable to the employer.

The Claimant's appeal was found timely. During the remainder of the hearing, the administrative law judge interrupted the parties in an abruptly rude manner, which caused the parties to hesitate to ask questions. (5:05-5:37; 24:42-25:00) She asked the Claimant who appeared pro se whether he had a legal objection (which he did not understand) to documents being offered into the record. As he tried to explain why he didn't want them accepted, she cut him off and allowed the documents into the record. (23:06-24:25) In another instance, the Administrative Law Judge raised her voice and directed the party to answer "yes, no, or I don't know..." and then went on to loudly interject, "...next question!" (26:46-27:08)

The administrative law judge's decision was issued May 5, 2016, which determined that the Claimant was eligible for benefits because the Employer failed to satisfy their burden of proof. 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.

While we appreciate the administrative law judge's need to expedite the hearing in a timely manner, that need cannot supersede the parties' right to a full and fair hearing. Here, the parties were hurried, and at times, cut off before completing their answers. Overall, we cannot conclude that the parties received a fair opportunity to present their cases. For this reason, we are remanding this matter for a new hearing.

DECISION:

The decision of the administrative law judge dated May 5, 2016 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for a new hearing. The administrative law judge shall conduct a hearing following due notice. 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