

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

SUZANNE M ELLENBERGER

Claimant,

and

COUNCIL BLUFFS COMM SCHOOL DIST

Employer.

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HEARING NUMBER: 13B-UI-10692

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was scheduled for October 14, 2013 in which the issues to be determined were whether the separation was a layoff; discharge for misconduct or voluntarily quit for good cause; and whether the claimant was able and available for work?

During the hearing, the Claimant stated that she offered the Employer a doctor's note, but the Employer wasn't interested in such documentation. The Claimant made it clear that she had that same document(s) with her for the hearing, but the administrative law judge made no attempt to have her read them into the record; nor did the administrative law judge ask the Employer to verify if she tried to submit the document(s) to them.

The administrative law judge's decision was issued October 17, 2013, which determined that the claimant voluntarily left her employment without good cause attributable to the Employer, and denied benefits.

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. Since we do not know whether the Employer was, in fact, offered medical documentation from the Claimant; and what this documentation contained as the issue to be determined, the Board must remand this matter for the taking of additional evidence to determine the content of this medical document and the Employer's response to the same.

DECISION:

The decision of the administrative law judge dated October 17, 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.

John A. Peno

Cloyd (Robby) Robinson

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

The Employment Appeal Board would note that the Claimant has quit part-time work.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186,

decision of the job service representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the account of the employer with which the individual requalified, transferred to the balancing account, or remain with the employer from which they were earned.

This matter shall also be sent to the Iowa Workforce Development Center, Claims Section, for a recalculation of benefits based on earnings from other employers.

Lastly, we note that a portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv