

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

MARK A PUZZO

Claimant

and

ATLANTIC CARRIERS INC

Employer

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HEARING NUMBER: 16B-UI-08006

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 17A.12-3, 26.14-7

DECISION

FINDINGS OF FACT:

The administrative law judge issued a decision in this matter 16A-UI-08006. The decision disposed of a preliminary matter only and reopened the record on the substantive issue of benefits. The Employer appealed the preliminary decision of the administrative law judge to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Pursuant to 486 IAC 3.1(2), "a party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board..." The Employment Appeal Board interprets an aggrieved party to be one who receives an unfavorable decision from the administrative law judge affecting benefit rights, or overpayment. Here the decision of the administrative law judge only rules on a preliminary matter, that is, whether the record should be reopened. The Administrative Law Judge pursuant to rule 871 IAC 26.8(3) reopened the matter, vacated the prior the decision and scheduled a new hearing. The issue of whether the Claimant should get benefits remains unresolved at this time. But what if we were to rule against the Claimant and he were then to appeal to the district court? Would the merits issue wait for a determination on this preliminary issue before ruling on whether to grant or deny benefits? If so it could be over a year before we have an answer to the question of benefits, which is clearly contrary to the interests forwarded by the Employment Security Law. Further it is perfectly possible that the Employer will prevail on the separation issue and this entire reopening issue will become entirely moot.

In short, the question of reopening does not legally aggrieve the Employer unless and until there is a ruling allowing benefits. *Iowa Industrial Commissioner v. Davis*, 286 N.W.2d 658 (Iowa 1979); *Salsbury Laboratories v. Iowa Dept. of Environmental Quality*, 276 N.W.2d 830 (Iowa 1979); *City of Davenport v. Paulsen*, No. 13-1357, (Iowa App., 11/13/2014). The Administrative Law Judge issued a decision which stated it was subject to appeal, but in which *no dispositive decision had been made*. The Employer has, understandably, chosen to appeal the reopening issue just in case it lost after reopening. A far better practice is the one we choose today. We dismiss the current appeal as an appeal of a preliminary matter, the disposition of which has not yet aggrieved the Employer. We expressly now hold that if the Employer loses on the merits before an Administrative Law Judge as a result of the proceedings following the reopening, then the Employer may appeal that decision and if such an appeal reaches the Board then the issue of reopening can be adjudicated based on the record in both this case and that one. In any proceedings before IWD, that agency (IWD) may take the issue of the reopening to have been already adjudicated, but in any subsequent appeal to the Board the issue of reopening can be adjudicated based on the record in both this case and in that subsequent one.

We recommend to IWD that in the future it should issue a reopening in a form where appeal rights are not given, in other words, issue a decision that is not appealable (as with, say, a motion for change of venue or a denial of a continuance). Again what we need to avoid is spending effort on an issue that may never aggrieve anyone at all, and to avoid the unnecessary delay that would often result from such a process.

DECISION:

The appeal of the Administrative Law Judge's decision in case 16A-UI-08006 is **DISMISSED**. The default decision of the administrative law judge has been vacated and the subsequent decision which vacated the default and reopened the record remains in full force and effect. The Employer may appeal the issue of the reopening order of September 1, 2016 to this Board if and when a final decision is made by an Administrative Law Judge adversely affecting the Employer on the issue of benefits to this Claimant.

Kim D. Schmelt

Ashley R. Koopmans

James M. Strohman