

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

BENJAMIN J TAYLOR

Claimant

and

IOWA CATHOLIC CONFERENCE

Employer

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HEARING NUMBER: 15B-UI-06769

**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 July 14, 2015 that addressed issues that were not, originally, noticed to the parties. The Employer waived notice and the hearing proceeded. The Claimant did not participate, and therefore, did not waive notice.

The Employer is an educational institution that indicated the Claimant was a part-time employee who was between terms and still employed. The administrative law judge's decision was issued July 20, 2015, which denied benefits, stating that the Claimant had reasonable assurance of continued work and is able and available for work. The matter was also remanded for a determination of the Claimant's eligibility for benefits based on other employer's wages. 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. None of the issues set forth in the Notice of Hearing were addressed, as there was no separation. And even though the issues of whether the Claimant was able and available for work, and whether the Claimant had reasonable assurance of continued work were waived by the Employer, we find it troublesome that neither party had proper advance notice of these matters prior to the hearing; particularly, the Claimant who did not have the opportunity to waive notice on these issues, which directly impacted his eligibility, and denied him due process. We would also note that even if the Claimant were denied benefits, it would only apply to his employment with the school. In turn, the school would not be charged for wages paid to him for this employment.

871 IAC 24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

Because the original Notice of Hearing is incorrect, we would remand this matter to the administrative law judge for a new hearing so as to allow both parties the opportunity to avail themselves of their due process right.

DECISION:

The decision of the administrative law judge dated July 20, 2015 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for a new hearing following proper notice of the issues to be addressed. The administrative law judge shall issue a new decision which provides the parties appeal rights.

Kim D. Schmett

James M. Strohman

AMG/fnv