

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

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**GILBERTO A ANGEL NAVARRO**

Claimant

and

**LEHMAN & ASSOCIATES CONCRETE INC**

Employer

**HEARING NUMBER: 16B-UI-00538**

**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 January 26, 2016 in which the issues to be determined were whether the Claimant was laid off; discharged for misconduct; or whether the Claimant voluntarily left for good cause attributable to the Employer.

At the hearing, the Claimant testified that his Employer told Mr. Navarro that he was going to get a letter for unemployment in three weeks, which didn't come. (23:45-23:52; 24:33-24:54; 29:49-30:01) His supervisor, Doug, advised him to go ahead and work for three days, after which time the weather got bad, and there was no work. (25:22-25:37; 30:39-31:15) The Claimant did not intend to quit his employment. (26:25-26:30)

The administrative law judge's decision was issued February 8, 2016, which determined that the Claimant voluntarily quit his employment without good cause attributable to the Employer, and disqualified him for benefits. 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.

Based on this record, it appears that the Claimant may have been temporarily laid off based on his repeated testimony that the Employer was going to issue a letter for him to present to the unemployment office; and that several people were already receiving unemployment benefits. However, there are no specific dates as to when this all took place. Since we do not know the answers to these questions, the Board must remand this matter for the limited purpose of eliciting testimony on whether or not the Claimant was laid off; and if so, what were the dates of that layoff.

**DECISION:**

The decision of the administrative law judge dated February 8, 2016 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. The administrative law judge shall issue a decision in consideration of this additional testimony. That decision shall also provide the parties with appeal rights.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv