

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

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**TERRY R HEERTS**

Claimant,

and

**TYSON FRESH MEATS INC**

Employer.

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**HEARING NUMBER: 14B-UI-03566**

**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 April 24, 2014 in which the issues to be determined were whether the claimant was laid off; discharged for misconduct; or voluntarily quit without good cause attributable to the employer.

Toward the latter part of the hearing, the administrative law judge indicated that "...we need to move it along...you've told me about that enough..." as she had another hearing. (11:09; 10:31; 2:08) She hurried the Claimant along in his testimony. The administrative law judge's decision was issued May 1, 2014, which determined that the claimant was ineligible for benefits due to job-related misconduct. 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) (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 administrative law judge abruptly shut down the hearing in order to make time for her next hearing. 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 the administrative law judge hastened through the end of the hearing, the Claimant did not have adequate time to fully present his case. For this reason, the Board shall remand this matter for the taking of additional evidence so that the Claimant may fully present his evidence.

**DECISION:**

The decision of the administrative law judge dated May 1, 2014 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.

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Kim D. Schmett

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Cloyd (Robby) Robinson

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Ashley R. Koopmans

AMG/fnv