

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

DONNA K JESSEN

Claimant,

and

MARKETLINK INC

Employer.

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HEARING NUMBER: 11B-UI-04639

**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 held May 13, 2011 in which the issues to be determined were whether the Claimant was discharged for misconduct; whether the Claimant voluntarily left for good cause attributable to the employer; and whether the Claimant was overpaid unemployment benefits. The administrative law judge's decision was issued May 16, 2011, 2011, which determined that the Claimant was allowed 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) (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. Although the administrative law judge ruled on the issue of work refusal, this issue was not included in the Notice of Hearing as one of the issues to be determined. In addition, there was nothing in the record to support that the parties waived their rights to such notice.

There is no question that due process principles apply in the context of hearings for persons seeking unemployment benefits. The court in Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996) remanded that matter essentially holding that to construe two issues as one does not fairly alert a party to a contested case that one or the other issue is a matter asserted on appeal.

Here, the parties only received notice on the issues of discharge, quit and overpayment. And while the issue of work refusal may be related to a separation, the law governing work refusal is separate and distinct. Thus, it was incumbent on the administrative law judge to include the issue of work refusal in the Notice of Hearing, thereby alerting the parties to be prepared with the relevant evidence. Since notice for work refusal is lacking, the Board must remand this matter for a new hearing, which includes notice for work refusal.

DECISION:

The decision of the administrative law judge dated May 16, 2011 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv