

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

EVA R MUNGUIA

Claimant

and

CAPTIVE PLASTICS INC

Employer

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HEARING NUMBER: 15B-UI-07117

**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 June 26, 2015 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 had two witnesses (her former co-workers) who were present and ready to testify. However, the Employer required them to leave to return to work prior to testifying. The administrative law judge's decision was issued July 27, 2015, which determined that the Claimant was ineligible for benefits because she was discharged from work for 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) (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. The Employer excused the co-workers, who were available on behalf of the Claimant, prior to their being able to provide testimony. We find this prevented the Claimant from fully presenting her case, which negatively impacted her right to due process. For this reason, we shall remand this matter so that the administrative law judge shall take additional evidence to obtain these two witnesses' testimony, and allow cross-examination of the same. The Claimant may request subpoenas, if appropriate.

DECISION:

The decision of the administrative law judge dated July 27, 2015 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv