

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

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**CHRISTINA L ZINK**

Claimant,

and

**DES MOINES IND COMM SCHOOL DIST**

Employer.

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**HEARING NUMBER: 14B-UI-06464**

**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 16, 2014 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. Additional issues to be determined were whether the claimant was overpaid benefits and liable to repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

During the hearing, there was no evidence as to whether Mr. Craft (co-worker) or Mr. Biggs (Principal) had appropriate reasonable suspicion training, inter alia. The administrative law judge's decision was issued May 21, 2013, which determined that the claimant was discharged for no disqualifying reason. 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. First of all, Iowa Code section 730.5 does not apply to the school district. Secondly, there is no evidence to support that the person who conducted the test had any reasonable suspicion training such that he could properly identify whether or not the Claimant's demeanor justified being subjected to the alcohol test. Thirdly, there was no evidence that the Employer didn't follow their own drug testing policy; nor was there any evidence about whether there was a medical review officer (MRO) involved in the drug test procedures. 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 we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence to further develop the record in the context of the school's drug policy, as opposed to Iowa Code section 730.5, which does not apply.

**DECISION:**

The decision of the administrative law judge dated July 22, 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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Ashley R. Koopmans

AMG/fnv