

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

CHARLES RIFE

Claimant

and

**FARMERS INS EXCH-FARMERS UW
ASSN**

Employer

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HEARING NUMBER: 22B-UI-04184

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was held March 17, 2022. The administrative law judge's decision was issued March 31, 2022. The administrative law judge's decision has been appealed to the Employment Appeal Board. That decision disqualified the Claimant for failure to comply with the Employer's policy on doctor's releases.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2022) 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 critical issue in this case, that is, the reason for the job separation is insufficiently clear for us to make a determination. It is for this reason that we remand this matter.

We note that the lack of clarity on this point cannot be attributable more to one party than the other. In fact, the record would support a quit theory as well as a discharge analysis, and so it is not even clear who had the burden of proof. *C.f.* ET Handbook No. 382, 3rd Edition p. 30 (DOLETA 2011); Iowa Code §96.6(2).

The essential issue is that the Claimant was required to produce a doctor's release following time off work. We agree with the Claimant's argument that the record is ambiguous on which of the following possibilities described the release in question: (1) it was to address whether the Claimant absence from work was for legitimate illness, or instead (2) it was to address the Claimant's fitness for duty following a long absence from work due to illness. The difference is key. If the issue was the Claimant not producing a doctor's note to excuse his past absence that absence would not be an unexcused absence under *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa App. 2007). **If**, then, the Employer fired for Claimant for absenteeism based on the lack of a doctor's note for the *past absence* then this would not normally be misconduct. Also if the Claimant was fired for insubordination by refusing to get the note to excuse the *past* absence, or if the Claimant quit rather than produce a note for the past absence, then the fact that the Claimant was no longer sick at the time the requirement was imposed *might* be sufficient to justify the quit or refusal to comply. But on the other hand, if the requirement was that the Claimant obtain a fitness for duty release that is a different matter. To be explicit, when we say a fitness for duty release we mean that the Employer required the Claimant to get a release from a doctor addressing the Claimant's then-current ability to safely perform his job duties at the Employer. In such an instance the separation would not result from absenteeism. It would result from the Claimant's refusal to obtain a *release to go back to work*. This being the case, if the Claimant is treated as quitting, or committing insubordination, either way we would need to know: what was the Employer's reason for imposing the return to duty requirement (meaning if it was a policy, then what was the purpose of the policy), and what were the Claimant's reasons for refusal of the Employer's demand. The case would then proceed to the usual insubordination or quit analysis, or even both in the alternative, as the evidence may merit.

In essence, we need a new record to clarify this issue. While we could remand for the limited purpose of resolving the ambiguity only, in our discretion we prefer to have a new hearing. Limited remands are rarely successful at clarifying things where the unresolved ambiguous issue is so integral to the case. In our judgment a general remand on the issue of whether the separation was disqualifying will more likely produce a reliable record for us to render a decision.

DECISION:

The decision of the administrative law judge dated March 31, 2022 is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is **remanded** to an administrative law judge to conduct a new hearing. The administrative law judge shall conduct a new hearing following due notice. The hearing will address the issues in this case paying special attention to resolving the ambiguity over the nature of the doctor's release which the Employer required the Claimant to obtain.

After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights. This decision of the administrative law judge shall be based upon that evidence, including testimony and exhibits, which is admitted in the new hearing, and may not be based on evidence adduced during the first hearing **unless** that evidence from the first hearing is expressly made part of the record during the second hearing.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv