

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

JENNIFER R CHIHAK

Claimant,

and

BEATON INC

Employer.

HEARING NUMBER: 13B-UI-09255

**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 September 17, 2013 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 benefits.

During the hearing, the administrative law judge commented that "...[the Claimant] is punching holes in your case all over the place. If you don't see that you're missing something..." (2nd recording -Tr. 47, lines 18-19) when the Employer expressed concern about moving the case along in the interest of time. The administrative law judge, again, appeared to 'lose it' after the Employer inferred that the administrative law judge had already made up his mind. (2nd recording -Tr. 48, lines 19-34, Tr. 49, lines 1-14)

The administrative law judge's decision was issued September 30, 2013, which determined that the Claimant was discharged for no disqualifying reason, and was allowed benefits provided she was otherwise eligible. 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 strains our sense of fairness based on the lack of decorum the administrative law judge's displayed at being questioned about the lengthiness of the hearing. (2nd recording -Tr. 47, lines 18-19) While we can certainly sympathize with his frustration, his subsequent responses also lacked the appropriate judicial temperament that any party to such a proceeding has a right to expect under the circumstances. (2nd recording -Tr. 48, lines 19-34, Tr. 49, lines 1-14) The administrative law judge's 'abrasive' demeanor, at times, could reasonably be construed as bias, particularly in light of the fact that his curt and seemingly confrontational manner was directed to the party who ultimately lost the case. For this reason, we shall remand this matter for a new hearing with a different administrative law judge so as to eliminate any appearance of impropriety.

DECISION:

The decision of the administrative law judge dated September 30, 2013 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau a new hearing. A different administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv