

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

ANGELA M PYLE

Claimant,

and

COMMUNITY 1ST CREDIT UNION

Employer.

:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 11B-UI-08533

**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 July 20, 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. The administrative law judge's decision was issued July 21, 2011, which determined that the claimant voluntarily quit without good cause attributable to the employer. The administrative law judge's decision has been appealed to the Employment Appeal Board.

On appeal, the claimant indicated that the administrative law judge failed to issue subpoenas for documents as timely requested. The claimant faxed a request for subpoena of documents on July 14, 2011. That request was received by the Appeals Section on July 14, 2011 based on the date-stamp, which indicates the same. The agency received the subpoena request 6 days prior to the hearing.

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 Notice of Hearing, specifically, indicates as follows:

If a witness you need to prove your case refuses to participate or the opposing party refused to give you a document you need for you case, you must *send a written request for a subpoena to order the witness to testify* or the opposing party to produce the document. *The request must be sent to the Subpoena Clerk at the address or fax number listed below at least five days before the hearing* and must state: (1) why the witness or document is important to your case; (2) The witness refuses to testify or the opposing party refuses to provided a document voluntarily; and (3) the name and home address of the witness or description of the document needed. (Emphasis added.)

In addition, 871 IAC 26.13(1) provides:

Subpoenas and witnesses. (1) It is the responsibility of the parties to request the attendance of such witnesses they believe have knowledge of the facts in issue in the contested case.

(2) Upon the written request of a party in interest received at least three days prior to the date of a hearing, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

(3) The written request shall include:

a. The name and address of the person to be served;

b. A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses; and

c. A statement that the witness refuses to testify voluntarily despite the party's request that the person do so.

In the instant case, the claimant established that she requested the subpoena well in advance of the hearing. She supplied the name, address, and the reason why the documents she requested were material to the case. Yet, the administrative law judge did not honor or address the subpoena request until well into the hearing after the claimant mentioned her request. (Tr. 19) The administrative law judge indicated that the employer cannot be required to reveal confidential personnel information, which is not wholly accurate. See, Iowa Code section 17A.13(1) (2011).

It is clear that the claimant complied with the notice requirements, yet by the administrative law judge's failing to issue the subpoena, the claimant was denied an opportunity to fully present her 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. We conclude that failure to issue the subpoena deprived the claimant of a fair opportunity to present her case. For this reason, the Board must remand this matter for the administrative law judge to issue the requested subpoena for the submission of these documents into the record, and the taking of, and cross-examination of the same.

DECISION:

The decision of the administrative law judge dated July 21, 2011 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.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/kk