

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

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**MELISSA M SCHWIERJOHANN**

Claimant

and

**CARE INITIATIVES**

Employer

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**HEARING NUMBER: 20B-UI-08161**

**EMPLOYMENT APPEAL BOARD  
DECISION NUNC PRO TUNC**

**SECTION:** 10A.601 Employment Appeal Board Review

**DECISION**

*The Board recognized a clerical error. The date stamp '2015' should read 2020.*

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for August 24, 2020 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. The administrative law judge took testimony from both parties, with the exception of one of the Employer's witnesses, Ms. Drake. At the hearing, the administrative law judge indicated she would continue the hearing because she had another hearing scheduled. Yet, by the time of this appeal, no additional hearing to include Ms. Drake's testimony had been held.

The administrative law judge's decision was issued September 3, 2020, which denied benefits based on job-disqualifying 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) (2019) 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 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. Since the record is lacking the testimony and cross-examination of one of the Employer's witnesses (Ms. Drake), the record is incomplete. For this reason, the Board shall remand this matter for the limited purpose of reconvening the hearing so as to allow Ms. Drake to testify and complete the record.

**DECISION:**

The decision of the administrative law judge dated September 3, 2020 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to the same administrative law judge who held the initial hearing in the Appeals Bureau, for further development of the record consistent with this decision. The administrative law judge shall conduct a limited hearing following due notice, if necessary. The administrative law judge shall then issue a new decision which provides the parties appeal rights.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

AMG/fnv