

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

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**JUSTIN R GERBER**

Claimant,

and

**CLINTON STAFFING COMPANY**

Employer.

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**HEARING NUMBER: 11B-UI-14114**

**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 November 30, 2010 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 sought reassignment from the employer. The administrative law judge's decision was issued December 1, 2010, which determined that the claimant's "employment...did not come to an end...he was [temporarily laid off...]" and no disqualification was imposed.

During the hearing, however, the employer appeared to be cut off when she tries to explain the company policy, presumably as it relates to the temporary employer. (Tr. 2, line 31) 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) (2005) 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 this case. While we know that the employer is a temporary employer, we do not know what the employer's notification policy is and whether the claimant complied with the same. 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 the aforementioned questioned, this matter must be remanded for the taking of additional evidence and further consideration.

**DECISION:**

The decision of the administrative law judge dated December 1, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

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