

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

LORI A KELEHER

Claimant

and

MID-STEP SERVICES INC

Employer

:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 15B-UI-09345

**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 4, 2015 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.

At the hearing, the administrative law judge's demeanor was generally aggressive and curt throughout the hearing. At times, the administrative law judge seemed to borderline advocate for the Employer in her line of questioning. She also abruptly cut the Claimant off repeatedly just before the Claimant could respond to her questions. (24:51-25:00; 25:38-25:58; 29:51-30:00; 30:23-30:45; 32:27-32:35; 33:06-33:46; 34:19-34:38; 41:15-41:38)

The administrative law judge's decision was issued September 8, 2015, which determined that the Claimant was discharged due to job-related misconduct and denied benefits. 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) (2015) 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 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. Based on the administrative law judge's demeanor throughout this hearing, we conclude that the Claimant did not receive a fair opportunity to fully present her case. For this reason, the Board must remand this matter for a new hearing.

DECISION:

The decision of the administrative law judge dated September 8, 2015 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau for a new hearing before a different administrative law judge. The administrative law judge shall conduct a hearing following due notice, and then issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv