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

| JOSEPH A OLINE | HEARING NUMBER: 18BUI-10362 |
|----------------|-----------------------------|
| Claimant | |
| and | EMPLOYMENT APPEAL BOARD |
| AEROTEK INC | |
| Employer | · · |

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for 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; and whether the Claimant was overpaid. Additional issues to be addressed were whether the Claimant should repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

At the hearing, many of the Claimant's attempts to respond to the administrative law judge's questioning were repeatedly interrupted, and were unclear. The Employer did not participate. The administrative law judge's decision was issued November 1, 2018, which denied benefits based on a termination for 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) (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. The Claimant was unable to fully develop his case due to many interruptions. Since the record is unclear and incomplete, the Board must remand this matter for a new hearing with a different administrative law judge.

DECISION:

The decision of the administrative law judge dated November 1, 2018 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 a different 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.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv

James M. Strohman