

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

DAINCA Y BROWN	:	
	:	
Claimant	:	HEARING NUMBER: 20B-UI-05648
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
RYDER INTEGRATED LOGISTICS INC	:	
	:	
Employer	:	

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for July 1, 2020 in which the issue to be determined was whether the Claimant was able and available for work. During the hearing, the Claimant indicated her start date was January 28, 2019 as a full-time forklift operator. She also indicated she had a work-related shoulder injury for which she was on leave. In addition, the Claimant sustained a nonwork-related ankle injury. The Claimant's doctor released her to return to work on March 12, 2020 restricting her from any up and down motion (bending, squatting, stooping) on the forklift. In the meantime, while the Claimant was getting physical therapy on her shoulder, the Employer allowed her to work in the Welcome Center checking trucks in and out.

On or about March 15th or 16th, 2020, the Employer issued a termination letter because the Claimant exceeded her short-term disability. This termination was to help expedite her receiving long-term disability so she could get additional physical therapy.

The administrative law judge's decision was issued July 21, 2020, which denied benefits on the basis the Claimant was not able and available for work. The issue of whether the Claimant is separated from this employment has not been adjudicated. 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 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 record is unclear whether the Claimant was not able and available for work as a result of her work-related injury or her nonwork-related injury. In addition, was the Claimant considered to be on an agreed upon leave of absence as set forth in 871 IAC 24.22(2)”, which would be considered a period of voluntary leaving until she returns to work; or was there actually a separation, i.e., the Claimant intended to quit her employment because of her injury. Since we do not know the answers to these questions, the Board must remand this matter for a new hearing to determine more specifically whether the Claimant was not able and available for work, and whether there has been a separation from employment.

DECISION:

The decision of the administrative law judge dated July 21, 2010 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 an administrative law judge in the Unemployment Insurance Appeals Bureau, for a new hearing. The administrative law judge shall conduct a hearing following due notice, and issue a decision which provides the parties appeal rights.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

AMG/fnv