

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

VICTOR J EVANS

Claimant,

and

**WATERLOO COMMUNITY SCHOOL
DIST**

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 11B-UI-02364

**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 March 24, 2011 in which the issues to be determined were whether the claimant's appeal was timely; whether the claimant was still employed at same hours and wages; and whether the employer can be relieved of charges. The administrative law judge's decision was issued March 25, 2011, which determined that the claimant's appeal was timely; however, the claimant "...did not meet the availability requirements of the law and benefits were denied. The matter was also remanded to the Claims Section for an initial determination regarding the final separation and an investigation and determination of the overpayment issue." 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) (2011) 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 contains no evidence as to whether the claimant was on a program, such as DAT in which he had to attend training and not be able and available. And if he was involved in such a program, during what time frame was he involved in such training. In order to obtain the answers to these questions, the Board must remand this matter for the taking of additional evidence.

DECISION:

The decision of the administrative law judge dated March 25, 2011 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.

John A. Peno

Elizabeth L. Seiser

kk/amg