# BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

JUAN A SOLIS-GOMEZ

Claimant, : **HEARING NUMBER:** 15B-UI-13073

and

: EMPLOYMENT APPEAL BOARD

ADVANCE SERVICES INC : DECISION

Employer.

**SECTION:** 10A.601 Employment Appeal Board Review

## DECISION

## **FINDINGS OF FACT:**

A hearing in the above matter was scheduled for January 15, 2014 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. Additional issues to be determined were whether the Claimant made a timely request for another job assignment; whether the Claimant was overpaid benefits and liable to repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

At the hearing, the Employer indicated that he had another hearing to attend at 10:30 a.m. in another state and requested a continuance at 10:15 a.m., which the administrative law judge denied. The Employer did not have an opportunity to cross-examine the Claimant, nor did he have an opportunity for rebuttal.

The administrative law judge's decision was issued January 16, 2014, which determined that the Claimant left employment with good cause attributable to the Employer, and allowed 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) (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. Since Employer did not have the opportunity to fully develop his case, the Board shall remand this matter for the limited purpose of allowing the Employer to cross-examine the Claimant, provide rebuttal, and allow for any redirect the Claimant may have of the Employer.

#### **DECISION:**

The decision of the administrative law judge dated January 16, 2015 is not vacated. This matter is remanded to an 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
James M. Strohman
James M. Strohman

AMG/fnv