

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

DAVID E HILL

Claimant,

and

LABOR WORLD OF IOWA

Employer.

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HEARING NUMBER: 11B-UI-00043

**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 February 18, 2011 in which the issues to be determined were whether the claimant was able and available for work; whether the claimant is still employed at same hours and wages; and whether the claimant sought reassignment from employer. The administrative law judge's decision was issued March 2, 2011, which determined that the claimant was denied benefits because he "...[did] not meet the availability requirements of the law."

During the hearing, there was no mention of what the claimant's wages were in the base period in which he filed his claim. 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) (2005) 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. While we know that the claimant was separated from his part-time employment, there was no evidence adduced as to what hours the claimant worked; what were his base period wages; and what his benefit amount was. All of this information could have a bearing on the outcome of this matter. 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 we do not know 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 2, 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

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv