

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

CHRISTINE H REX

Claimant,

and

WALMART STORES INC

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 14B-UI-10102

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

FINDINGS OF FACT:

A hearing in the above matter was scheduled for October 17, 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 was overpaid benefits and liable to repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

During the hearing, the administrative law judge contacted TALX, but it appears their only concern was a timeliness issue that was resolved. The Employer's representative was released from the call, as she wasn't needed. There was no discussion regarding whether or not TALX or the Employer participated in the Fact-finding Interview. The administrative law judge's decision was issued October 20, 2014, which determined that the Claimant was ineligible for benefits because she was discharged from work 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) (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 fully review the record. 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. There was no testimony elicited from the Employer's representative, who was temporarily on the line, nor the Employer who was available throughout the hearing as to whether these parties participated in the Fact-finding Interview such that we can determine whether the Employer's account should be charged. Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence from TALX and the Employer on whether these parties participate in the Fact-finding Interview regarding the above-referenced matter.

DECISION:

The decision of the administrative law judge dated October 20, 2014 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

AMG/fnv