BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

EDWARD L WHITE

Claimant, : **HEARING NUMBER:** 12B-UI-09006

and

: EMPLOYMENT APPEAL BOARD

CRST VAN EXPEDITED INC : DECISION

Employer.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for August 21, 2012 in which the issue to be determined was whether the Claimant's appeal was timely; whether the Claimant was discharged for misconduct; and whether the Claimant voluntarily left for good cause attributable to the Employer.

During the hearing, the administrative law judge did not address the Claimant's allegations that the Employer did not pay him the wages he promised at the start of his employment. It was only after a week beyond the Claimant's separation from CRST that he became the owner/operator of another trucking company (Prime). The administrative law judge's decision was issued August 23, 2012, which determined that the Claimant's appeal was timely, and that he voluntarily quit without good cause attributable to the Employer. 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. The Claimant argued that he quit because he was not paid as promised by CRST. There is nothing in the record to establish what the Claimant's original contract of hire was, or how the Employer's failure to pay him wages impacted that contract. 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 August 23, 2012 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.

John A. Peno
Cloyd (Robby) Robinson

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester	

AMG/fnv