

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

ABDISALAM M ALI

Claimant

and

WEST LIBERTY FOODS LLC

Employer

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HEARING NUMBER: 22B-UI-05465

**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 April 12, 2022. The administrative law judge's decision was issued April 20, 2022. The administrative law judge's decision has been appealed to the Employment Appeal Board. That decision disqualified the Claimant for voluntarily leaving work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2022) 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.

Two critical issues in this case are insufficiently clear for us to make a determination. It is for this reason that we remand this matter.

The first issue that is unclear is the testimony from the Employer that there was a change in the job duties of the Claimant once he was moved to the spice room. The record indicates that there was a change, but what the change was is not clear. We therefore cannot tell if there was a change in duties *in the spice room* from the time

that the Claimant agreed to work that position, until the time that the Claimant quit. Moreover, we cannot tell whether this change is related to the reason the Claimant quit. So we need to know what change in duties *in the spice room*, if any, was imposed following the time that the Claimant agreed to work the spice room. Also, we need to know precisely why the Claimant quit the job *in the spice room*, and whether this was related to the change in duties (if any).

The next issue is a bit more obscure. This Claimant is disqualified based on his separation with Team Staffing Solution in a decision we issued today. Iowa Code section 96.5 now provides “[a]n individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits” if the individual voluntarily leaves work. The disqualification remains in place until the individual earns ten times his weekly benefit amount, here \$207. So following the January 29, 2021 separation with Team Staffing the Claimant would be disqualified until he earned \$2,070 in covered wages. We note that through the first three quarters of 2021 the Claimant earned more wages with Team Staffing than anywhere else, so this was not supplemental employment at the time of the quit. The Claimant’s wage credits show a total earning through the first three quarters of 2021, excluding Team Staffing, of about \$940. The Claimant himself filed for benefits every week from August 29, 2021 through November 20, 2021. He reports a total of \$733 in wages during the weeks that he filed. Together with the other *possible* wages earned after quitting Team Staffing this is only \$1,673. This figure may well be high since it might be crediting him with some wages twice. Since the Claimant’s benefit year has ended, and since he stopped filing for benefits back on November 20, 2021, at no point during the period when Claimant seeks benefits had he requalified following the Team Staffing disqualification. Thus the West Liberty case would make no difference in benefit payments so long as the Team Staffing disqualification stands. But there is one important thing appearing in the administrative record: no wages from West Liberty Foods have been reported. Since West Liberty Foods is an Iowa employer, and the Claimant lives in Iowa, we would expect to see *covered wages* from West Liberty Foods reported in Iowa. Naturally these could be sufficient to requalify the Claimant following the Team Staffing separation (which would make that case moot). But we see no West Liberty Foods wages reported under that name, or employer number. Since the Claimant worked for West Liberty Foods in the second and third quarters of 2021 we would expect these wages to have been reported long ago. This raises the possibility that this was not covered employment, although it is certainly possible that West Liberty Foods has made some oversight, or that the Claimant worked there through a temporary employment firm (although Claimant’s only second and third quarter 2021 wages are from Nordstrom’s). But disqualification from a temporary employer is different than ending of an assignment. And an independent contractor earning non-covered wages would not be disqualified for quitting self-employment. To get clarity on this issue as well we will remand.

Limited remands are rarely successful at clarifying things where the unresolved ambiguous issue is so integral to the case. In our judgment a general remand on the issue of whether the separation was disqualifying, including the nature of the compensation earned by the Claimant, will more likely produce a reliable record for us to render a decision.

DECISION:

The decision of the administrative law judge dated April 20, 2022 is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is **remanded** to an administrative law judge to conduct a new hearing. The administrative law judge shall conduct a new hearing following due notice. The hearing will address the issues in this case paying special attention to resolving the factual issues identified above.

After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights. This decision of the administrative law judge shall be based upon that evidence, including testimony and exhibits, which is admitted in the new hearing, and may not be based on evidence adduced during the first hearing **unless** that evidence from the first hearing is expressly made part of the record during the second hearing.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv