

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

EDWARD L KILLIAN	:	
	:	
Claimant,	:	HEARING NUMBER: 12B-UI-14989
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
RUHL & RUHL COMMERCIAL CO	:	
	:	
Employer.	:	

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED, as to the separation issue, and REMANDED, as to the able and available issue.**

FINDINGS OF FACT:

A hearing in the above matter was held December 14, 2011 in which the issues to be determined were whether the Claimant was discharged for misconduct; whether the Claimant voluntarily left for good cause attributable to the Employer; and whether the Claimant was able and available for work. The Claimant's last day worked was October 14, 2011. During the hearing, the Claimant also indicated that he applied for short-term disability on October 27, 2011. (Tr. 8, 20-21, 25, Claimant's Exhibit 1)

The administrative law judge's decision was issued December 21, 2011, which determined that the Claimant was discharged for no disqualifying reason. 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 parties were issued a Notice of Hearing that included both the issues of the Claimant's separation and the Claimant's being able and available for work. While the administrative law judge held a hearing and took testimony on the separation issue, there was no determination made as to whether the Claimant was able and available for work. For that reason, the Board is remanding this matter for further consideration.

DECISION:

The administrative law judge's decision dated December 21, 2011 is **AFFIRMED, as to the separation issue**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is allowed benefits provided he is otherwise eligible.

This matter is also **REMANDED, as to the able and available issue**, 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

Monique F. Kuester

AMG/fnv