

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

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**WENDY ACOSTA**

Claimant

and

**PRIMARY HEALTH CARE INC**

Employer

**HEARING NUMBER: 17BUI-10291**

**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 scheduled for November 7, 2017 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. The Claimant requested that subpoenas be issued for two individuals for which the administrative law judge issued the same.

At the hearing, it became known to the Claimant that those individuals were unable to appear at the hearing because they were out of state until mid-November due to their participation in external rotations. The administrative law judge proceeded with the hearing without the Claimant's subpoenaed witnesses.

The administrative law judge's decision was issued November 8, 2017, which determined that the Claimant was disqualified for benefits because she committed job-disqualifying 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) (2015) 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. 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.

The Claimant requested subpoenas for two individuals who could provide material and relevant information in this matter. The fact that she did not learn of these witnesses' absences at the hearing until the date and time of her hearing, deprived her of the opportunity to request a continuance to fully present her case, which we find would have been reasonable under the circumstances. For this reason, we shall remand this matter for the limited purpose of re-issuing the subpoenas so as to allow these individuals to present testimony; and allow the Employer the opportunity for cross-examination of the same.

**DECISION:**

The decision of the administrative law judge dated November 8, 2017 is not vacated 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 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.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohmman

AMG/fnv