

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

PATRICK H DEEM

Claimant

and

GIPH RESTAURANTS LLC

Employer

HEARING NUMBER: 20BUI-03944

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

A hearing in the above matter was scheduled for May 29, 2020 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. At the hearing, the Claimant indicated he gave his resignation. Yet, the administrative law judge made his decision based on issues not noticed to the parties.

The administrative law judge's decision was issued July 7, 2020, which modified the claims representative's decision by finding the Claimant was disqualified because he was not able and available for work effective March 15, 2020 as he was on a leave of absence. 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) (2019) 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. It is unclear whether there was a separation from the Employer, as the administrative law judge made no such determination. Rather, the administrative law judge's decision turns solely on the able and available issue

Page 2
20B-UI-03944

that was not noticed and should have been remanded for consideration. For this reason, we are remanding this matter for a decision on the Claimant's separation. The able and available issue should be remanded; however, depending on the outcome of the separation issue, a further remand may not be necessary.

DECISION:

The decision of the administrative law judge dated July 9, 2020 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 consideration consistent with this decision. 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.

James M. Strohman

Myron R. Linn

AMG/ss