

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

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**SOJI I OLUTUNDE**

Claimant,

and

**SYSTEMS UNLIMITED INC**

Employer.

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**HEARING NUMBER: 14B-UI-03375**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**DECISION**

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for April 21, 2014 in which the issues to be determined were whether the Claimant's separation was a layoff; a discharge for misconduct; or a voluntary quit for good cause attributable to the Employer.

During the hearing, the administrative law judge repeatedly denied the Employer's attempts to introduce evidence for the state agency investigation as well as refused evidence of the Iowa City police investigation. The administrative law judge's decision was issued April 25, 2014, which determined that the Claimant was eligible for benefits because he 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 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. Although the Employer was available at the hearing and tried to make his case with available documentary evidence, the Employer's efforts were thwarted. Since the record contains very little evidence as to why the Employer made the decision to terminate the Claimant, we must remand this matter for a complete record. The administrative law judge shall elicit additional testimony regarding the criminal investigation, state agency investigation, and the Employer's exhibits so long as this testimony does not cover any confidential information. The Claimant may also have the opportunity to cross-examine any witnesses as appropriate.

**DECISION:**

The decision of the administrative law judge dated April 25, 2014 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.

Despite our ruling today, we do point out that under Iowa Code §96.5(2)(b) "if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers." The cancellation of wage credits means that, even if the Claimant earns ten times his benefit amount following his discharge from this Employer, he may never collect benefits chargeable to the Employer. The parties should be aware that a determination of gross misconduct "may be redetermined within five years from the effective date of the claim." Iowa Code §96.5(2)(c). Thus the issue of gross misconduct might be determined in the future.

Gross misconduct, meanwhile, is "deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act." Iowa Code §96.5(2)(c). In Iowa, indictable offenses include serious misdemeanors, aggravated misdemeanors, and felonies, all of which are punishable by a fine of more than \$500 and more than 30 days in jail. If the Claimant is eventually convicted of an indictable offense, the Employer may seek retroactive relief under these provisions.

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Kim D. Schmett

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Cloyd (Robby) Robinson

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Ashley R. Koopmans