BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

JAVON I BAKER

: **HEARING NUMBER:** 19BUI-07404

Claimant :

and : **EMPLOYMENT APPEAL BOARD**

DECKER TRUCK LINE INC : DECISION

Employer :

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was scheduled for October 10, 2019 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; and whether the Claimant was overpaid.

At the hearing, the Claimant indicated he wanted to find a local job, which triggered his quit from the Employer. He began working at his new employment about a week after his quit. The Claimant worked at his new employment (Legend Trucking) for nearly two months driving a truck owned by Rommel who also worked for Legends, and according to the Employer's schedule. There were no paystubs present at the hearing to determine where the Claimant got his wages. The administrative law judge determined the Claimant was an independent contractor.

The administrative law judge's decision was issued October 11, 2019, which determined that the Claimant was denied for benefits because he voluntarily quit without good cause attributable to enter self-employment. 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) 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.

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871 IAC 23.19 (1) provides:

Employer-employee and independent contractor relationship. The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as veterinarians, construction contractors, physicians. lawvers. dentists. stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

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 lowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (lowa 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 from this record whether the Claimant was actually an independent contractor or an employee who left for the sole purpose of accepting other or better employment which he accepted, and performed services in accordance with lowa Code section 96.5(1) "c". Since we do not know the answers to these questions, the Board must remand this matter for the taking of additional evidence, i.e., pay stubs, and specifically whether the Claimant's employment fits into the factors outlined in 871 IAC 23(19) (1) to qualify as an independent contractor.

DECISION:

The decision of the administrative law judge dated October 11, 2019 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 addressed.	development The administra	of the ative law	record judge s	consistent shall conduc	with t a	this	decision,	unless	otherwise	already

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hearing following due notice, if necessary. It issue a decision which provides the parties a	f a hearing is held, then the administrative law judge shall appeal rights.
	Kim D. Schmett
	Ashley R. Koopmans
AMG/fnv	James M. Strohman