

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

LITASHA JEFFERSON

Claimant

and

ADVANCE SERVICES INC

Employer

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HEARING NUMBER: 15B-UI-05541

**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 June 10, 2015 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. Additional issues to be determined were whether the Claimant was overpaid benefits and liable to repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview.

At the hearing, the Employer indicated that the Claimant had an attendance problem. The Claimant called off work on April 23rd because she had too many energy drinks. (7:54-7:58) The Claimant's aunt passed away on Saturday, April 25th, 2015. (10:30-10:40) She contacted the Employer on April 25th & 26th to inform them that she would not be at work until Tuesday due to being out of town for the funeral. (8:00-8:06; 10:45-10:58) On Monday, the Claimant received an e-mail and voicemail from the 'branch manager' who indicated that her assignment had ended at CRST due to attendance. (11:39; 11:54-12:01)

Yet, the administrative law judge did not address the attendance issue in his decision. The administrative law judge's decision was issued June 15, 2015, which denied benefits and determined that the Claimant's separation was not attributable to the Employer. 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. In the instant case, there was no evidence adduced as to what schedule the Claimant worked, i.e., did she work only on weekdays, or did she work the weekends too? Additionally, it is unclear when exactly the assignment ended. Was the Claimant terminated from the assignment only on Monday, April 27th, 2015; or terminated from the agency; or both? Since we cannot know the answers to these questions based on the facts presented in the administrative law judge's decision, the Board must remand this matter for the taking of additional evidence, if necessary, to determine the same.

DECISION:

The decision of the administrative law judge dated June 15, 2015 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, and issue a new 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 new decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv

James M. Strohman