

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

TIFFANY A FORD

Claimant,

and

IOWA WORKFORCE

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HEARING NUMBER: 11B-EUCU-01091

**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 held December 11, 2010 in which the issue to be determined was whether the claimant was overpaid unemployment benefits. The administrative law judge's decision was issued December 17, 2010, which determined that the claimant was "...overpaid...in the amount of \$840 as the result of a redetermination of benefits.

The additional overpayment covered the same period (June 2, 2009 through August 8, 2009 for which the claimant had already paid back the overpayment originally assessed (\$2, 085), leaving her a zero balance as of November 19, 2009. (Tr. 2-3) The administrative law judge's decision has been appealed to the Employment Appeal Board in which the claimant expressed confusion about this 'redetermined' amount (\$840), as she believed she had paid back benefits twice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) 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 overpayment issue. While we know that the claimant had an original overpayment of \$2085 that was adjusted upwards of \$175 becoming \$2260; there is nothing in the record, however, to explain how the \$840 overpayment was arrived at. 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.

Since the Board does not know how the agency arrived at the \$840, which appears to have been assessed for the same period as the initial overpayment, this matter must be remanded for further consideration as well as a review of the claimant's payment record to ensure that the claimant has not paid a portion of her overpayment twice.

DECISION:

The decision of the administrative law judge dated December 17, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMGkk