

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

MICHAEL L DERRY

Claimant,

and

PRECISION AUTO CLINIC LLC

Employer.

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HEARING NUMBER: 13B-UI-04560

**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 May 22, 2013 in which the issues to be determined were whether the appeal was timely; whether the claimant is eligible for substitution of base period calendar quarters based on receipt of worker's compensation benefits. The administrative law judge's decision's (issued May 23, 2013) found that there were no 4th quarter wages for the claimant. However, the Board takes official notice of Iowa Workforce records which shows that the claimant did, in fact, have wages in that quarter. 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. Since it appears that the administrative law judge did not have this information available at the time of the hearing, and we are unsure how he arrived at that finding, the Board must remand this matter to the Iowa Workforce Development Center, Claims Section, for further consideration in light of the agency's records.

DECISION:

The decision of the administrative law judge dated May 23, 2013 is not vacated. This matter is remanded to the Iowa Workforce Development Center, Claims Section, for further consideration consistent with this decision, unless otherwise already addressed. The claims representative shall conduct a Fact-finding Interview following due notice, if necessary. If an Interview is held, then the claims representative shall issue a decision which provides the parties appeal rights.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv