

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

BRENT R SCHEIL

Claimant

and

HY-VEE INC

Employer

HEARING NUMBER: 19BUI-12232

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed December 26, 2018. The notice set a hearing for January 10, 2019, initially at 11:00 a.m. The Claimant contacted the agency to provide a telephone number at which he was called, and was available to participate at the scheduled time. During the hearing, the Employer was unable to continue due to a time conflict and the hearing was recessed until 2:00 p.m. When the hearing reconvened, the Claimant was unable to get connected after the administrative law judge made several attempts to call for his participation. The Claimant contacted the administrative law judge approximately 29 minutes after the hearing reconvened at 2:00 p.m.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a 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.

Here the Claimant was available to participate at the initial start of the hearing, but did not participate when the hearing reconvened because he experienced a connection problem. When he was able to make a connection, he contacted the administrative law judge. We find the Claimant demonstrated his intention to follow through with the appeals process based on his initial availability, and his subsequent call-in within a reasonable timeframe after the reconvening of the hearing. For this reason, this matter will be remanded for another hearing before an

administrative law judge so that the Claimant may avail himself of his due process right.

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We caution the Claimant that, barring exceptional circumstances, we will not again excuse a failure to call in a number where the Claimant could be reached.

DECISION:

The decision of the administrative law judge dated January 15, 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 Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/ss