

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

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**BRETT SIMMERMAN**

Claimant,

and

**CASEY'S MARKETING COMPANY**

Employer.

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**HEARING NUMBER: 09B-UI-12052**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed August 25, 2009. The notice set a hearing for September 8, 2009. The claimant contacted the agency to provide a telephone number at which he could be reached and received confirmation #89. The claimant's phone was subsequently disconnected and he went to the Iowa Workforce Development Center (IWD) to arrange for the call to come to him there.

On the day of the hearing, the claimant arrived at IWD at 1:30 p.m. in preparation for his hearing at 2:00 p.m. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the administrative law judge called the number he originally provided and did not receive an answer. In the meantime, when the claimant did not receive the call at IWD, he immediately tried to call the administrative law judge at 2:05p.m., but was unable to successfully place the call through. When he finally reached the administrative law judge, it was 2:16 p.m., and the ready had already been closed.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2009) 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 did not participate in the hearing through no fault of the claimant. The claimant experienced phone problems which prompted him to arrange to receive the administrative law judge's call at IWD. At the time of the hearing, however, he continued to experience other phone problems that precluded him from participating in the hearing. It is clear that the claimant had every intention of following through with the appeals process, but for circumstances beyond his control. We conclude that because he substantially complied with the notice instructions and made a good faith effort to participate, he has established good cause for his nonparticipation. For this reason, the matter will be remanded for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated September 9, 2009 is not vacated. 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.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

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