

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

SARAH L WESTPHALEN

Claimant,

and

KPTOO INC

Employer.

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HEARING NUMBER: 11B-UI-17536

**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 February 4, 2011. The notice set a hearing for February 23, 2011. The claimant, whose Mother is her legal guardian, contacted the agency to provide a telephone number at which she could be reached for the hearing. However, on the day of the hearing, the claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because her Mother (legal guardian) did not know about the Notice of Hearing and did not know the hearing was taking place.

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 because her Mother was unaware of the Notice of Hearing and subsequent proceeding in order to assist her daughter. Since the claimant was unable to effectively follow-through with the process without her Mother, we are remanding this matter for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated February 24, 2011 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, which should also include the claimant's Mother. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

Monique F. Kuester

Elizabeth L. Seiser

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would not remand this matter based on what I consider to be a lack of good cause to do so. Instead, I would decide the case of the merits.

John A. Peno

AMG/fnv